

MAYOR & CABINET		
Report Title	Response to Sustainable Development Select Committee – Pubs update	
Key Decision	No	Item No.
Ward	n/a	
Contributors	Executive Director for Housing, Regeneration & Environment (Director of Planning)	
Class	Part 1	Date: 10 October 2019

1. Summary

1.1 This report addresses a number of outstanding scrutiny matters and provides a response to Mayor and Cabinet on these. The report covers responses to the following:

- Comments of Sustainable Development Select Committee on Pubs – 27 March 2019; and
- Subsequent response from Sustainable Development Select Committee - 04 July 2019.

2. Policy context

Lewisham Corporate Strategy

2.1 Lewisham's existing statutory development plan, and the emerging draft new Local Plan, will play a key role in delivering the Council's Corporate Strategy 2018-2020. The Local Plan will engage with all of the key priority areas of the Corporate Strategy, with the current and emerging planning policy proposals concerning public houses relevant, in particular, to the following:

1. Open Lewisham – Lewisham is a welcoming place of safety for all, where we celebrate the diversity that strengthens us; and
4. Building an inclusive local economy – Every can access high-quality job opportunities, with decent pay and security in our thriving and inclusive local economy.

Planning policy framework

2.2 The National Planning Policy Framework (2019) and London Plan (2016), along with the emerging draft new London Plan (2017), once adopted, set the planning policy framework for England and London respectively. These higher level policies recognise the value of public houses as community facilities and the important economic role they play. Lewisham's planning policies are required help facilitate the delivery of sustainable development locally in a manner that is consistent with national planning policy and in general conformity with the London Plan.

- 2.3 The Council's detailed planning policies for new development proposals involving public houses is currently set out in the Development Management Local Plan (2014) and specifically, DM Policy 20 (Public Houses). This policy was prepared in response to local issues surrounding the loss of public houses through material changes of use (such as conversions) and redevelopment.
- 2.4 The Council's planning policy team is currently taking the opportunity to review DM Policy 20 through the preparation of the new Lewisham Local Plan. The review will take into account planning decisions on relevant applications and new technical evidence, along with changes in the higher level planning framework since the Core Strategy (2011) and Development Management Local Plans were adopted.

3. Update and Response to the Mayor

Pubs

- 3.1 On the 27 March 2019 a report was presented to Mayor & Cabinet of the comments and views of the Sustainable Development Select Committee, arising from a short review of issues facing the pub trade in Lewisham. This review was presented to SDC on the 12 December 2018.
- 3.2 This was a follow up to a previous review of pubs in Lewisham in 2012 'Preserving Local Pubs', providing a policy review as an addendum in 2017. The Committee heard from witnesses about current issues facing the trade. The resulting report and recommendations were agreed at the committee's meeting in March 2019. David Syme (Strategic Planning Manager) provided a brief update in terms of changes in policy at a national and regional level related to pubs. The following recommendations were agreed at the Committee's meeting on 4 March 2019.

Sustainable Development Select Committee Views

- 3.3 The Committee recommends that Lewisham's new Local Plan should include the following:
- A section that provides automatic protection from redevelopment for all purpose-built pubs built in the 20th century and before. The wording should make clear that all the ancillary parts of the pub including beer gardens, function rooms, car parks, kitchens, cellars and accommodation above should be retained in order to maximise the opportunity to successfully run a pub business. This should also exclude the developer from converting the accommodation above to flats for sale or rent. While protecting the ancillary assets from housing development, the section should be sufficiently flexible to allow the owner to vary the use of the asset, so long as it can be demonstrated that the changes will assist in benefiting the use of the building as a public house.

This section is compliant with Mayor of London's new Draft London Plan policy HC7 C: "Development proposals for redevelopment of associated accommodation, facilities or development within the curtilage of the public house that would compromise the operation or viability of the public house use should be resisted"

The introduction of the 'Agent of Change' principle in the Draft Culture and the Night Time Economy SPG by the Mayor of London highlights the importance of protecting venues such as pubs, ensuring any new

development adjacent, or above, does not restrict its offering as a business.

In order to apply the agent of change principle thoroughly, it is important to make sure the new developer has fully considered the noise at all times of day; people leaving the pub late at night, not just the “noise” emanating from within the pub; potential future noise; consulted properly with the existing publican; installed the right measures; potentially redesigning the layout of the new building to ensure the pub’s business is not impacted by noise complaints.

The Mayor of London’s latest guidance is contained in the London Plan (2019) policy D12 – Agent of Change.

The Council can then adopt the following:

- A. The Agent of Change principle places the responsibility for mitigating impacts from existing noise-generating activities or uses on a proposed new noise-sensitive development.
- B. Lewisham Council should therefore ensure that planning decisions reflect the Agent of Change principle and take account of existing noise-generating uses in a sensitive manner when new development, particularly residential, is proposed nearby.
- C. Development proposals should manage noise and other potential nuisances by:
 - ensuring good acoustic design to mitigate and minimise existing and potential impacts of noise generated by existing uses located in the area.
 - exploring mitigation measures early in the design stage, with necessary and appropriate provisions secured through planning obligations.
 - separating new noise-sensitive development where possible from existing noise-generating businesses through distance, screening, internal layout, sound-proofing and insulation, and other acoustic design measures.
- D. Development should be designed to ensure that established noise-generating venues remain viable and can continue or grow without unreasonable restrictions being placed on them.
- E. New noise-generating development, such as industrial uses, music venues, pubs, rail infrastructure, schools and sporting venues proposed close to residential and other noise-sensitive development should put in place measures such as soundproofing to mitigate and manage any noise impacts for neighbouring residents and businesses.
- F. Lewisham Council should refuse development proposals that have not clearly demonstrated how noise impacts will be mitigated and managed.
- G. In addition the committee recommends that the Local Plan should be reviewed to include the possibility of:

3.4 A mechanism to reduce business rates for public houses under certain circumstances.

- An investigation into how bureaucracy can be reduced in order to help pubs thrive.

Response 5 June 2019 to issues raised 27 March 2019

3.5 In relation to pubs the draft Local Plan is taking on board the National Planning Policy Framework's 2019 (NPPF) revised emphasis on pubs as 'community facilities', embedding this principle in local policies. The draft policies are proposing to go a step further look at providing a presumption against the loss of all pubs within Lewisham (including the ancillary elements of a pub), as well as providing additional protection to pubs in the borough by outlining a revised approach to development proposals that may affect the function of existing pubs.

3.6 The draft London Plan (once adopted) will form part of Lewisham's development plan, meaning the proposed policy (D12 'Agent of Change') will form part of the formal development plan in Lewisham. To provide additional local support to this new planning principle the draft Local Plan is also looking to include a new policy on the principle of the 'agent of change', which will provide additional policy support for this.

3.7 The new Local Plan is being drafted in a form that seeks to be more accessible to developers and communities, and is proposed to be formed of a single document providing an integrated approach to planning in Lewisham. In addition to the work of the planning department on service improvement, the new Local Plan should enable a more accessible and effective approach to planning.

3.8 The setting of business rates is something that falls outside the scope of matters that Local Plan policy can address. Pub Relief ended on the 31 March 2019, however from April 2019 the government has introduced business rates relief in the form of a Retail Discount where eligible retail businesses with a rateable value less than £51,000 could receive 33% off their bill. This discount is available to pubs. Any additional new discretionary scheme introduced locally in Lewisham for a reduced business rates allowance for pubs would need to be funded by the Council and the implication of this would have to be considered carefully as part of future budget decisions.

Resolution at Sustainable Development Select Committee 4 July 2019

3.9 The following was resolved at the meeting of Sustainable Development Select Committee on 4 July 2019:

Resolved: that the Committee would refer its views to Mayor and Cabinet, as follows:

- The Committee believes that Lewisham's pubs are at risk. It has identified an opportunity to increase protection for local pubs through the development of the new local plan. Contrary to the strength of feeling in the Committee about this issue, councillors are not reassured that their comments on preserving Lewisham's pubs have been given full and thorough consideration. The Committee asks that Mayor and Cabinet

direct officers to provide a detailed response to the Committee's recommendations on preserving Lewisham's pubs. This should define the actions that have been taken. Furthermore, it reiterates its view that the protection of Lewisham's pubs should be championed through planning policy and fully incorporated into the new local plan.

Update to issues raised 4 July 2019

- 3.10 Planning policy officers have commenced a process of internal consultation on the main issues to be considered by the new Local Plan, along with the preferred strategic approaches and detailed policies to address these. This has included consultation with councillors through several All Member Workshop sessions over the past year and with officers in other service areas, as appropriate. Through this process planning officers have engaged with the issues surrounding public houses raised by the Select Committee, whilst also providing opportunities for Members and senior officers to provide feedback on the emerging policy proposals, including the emerging draft policy on public houses.
- 3.11 The latest draft of the public houses policy is included in **Appendix 1** to this report, along with policies addressing other detailed matters raised by the Select Committee (e.g. agent of change, noise). The policy and supporting text have been amended following feedback from Members taking into account comments received both through the All Member Workshops and the Select Committee, as well as the latest outcomes of the draft London Plan examination (i.e. minor modifications arising from the examination hearing sessions). The latest changes to the pubs policy are shown marked in underlined and strikethrough text. Of particular note is the new 'presumption against the loss of public houses' that is proposed to be introduced locally. Amendments also include clarifications that the protection of pubs refers to both their operational and ancillary spaces, and additional requirements for the types of evidence applicants must submit in support of planning applications.
- 3.12 The latest draft of the Local Plan policies will be discussed further with the Select Committee in advance of the proposals being progressed to Mayor & Cabinet and Council, when officers will formally seek approval to undertake a statutory public consultation on the draft new Local Plan. The council will be required to take into account feedback received through the consultation process, including responses that may be received from industry and other key stakeholders and the wider public.
- 3.13 Planning policy officers share the views of the Select Committee and other Members in respect of the important role of public houses as valued community facilities and their contribution to supporting the local economy. Therefore, officers are currently reviewing and seeking to strengthen the extant DM Policy 20 (Public houses). The intention is that the new Local Plan will provide stronger planning policy protection to pubs, including by preventing against their loss, harmful alterations and ensuring they benefit from the 'agent of change' principle.
- 3.14 Before the council can adopt the Local Plan it must be found sound by a Planning Inspector through the independent examination process, where the plan will be assessed against the 'test of soundness' prescribed by national planning policy. This will require that the policies are evidence based and not unduly restrictive, including for reasons of economic viability. A balanced

approach to managing development affecting public houses will therefore be necessary. This will ensure the principal objectives of protecting against the loss and harmful alteration of pubs continue to be given effect in Lewisham's development plan. The Scrutiny Committee and other Members are invited to provide further feedback to assist in refining the emerging policy proposals, taking into account the statutory plan making requirements.

RECOMMENDATION that the responses be approved and reported to the Select Committee

4. Financial Implications

4.1 There are no financial implications arising from this report.

5. Legal Implications

5.1 There are no legal implications arising from this report.

6. Equalities Implications

6.1 The Council's Comprehensive Equality Scheme for 2016-20 provides an overarching framework and focus for the Council's work on equalities and helps ensure compliance with the Equality Act 2010. It describes the Council's commitment to equality and fairness for citizens, service users and employees through its powers to influence access to good quality housing, education, safety & security, health and leisure services.

6.2 The emerging draft planning policies set out in Appendix 1 are proposed to be included in Lewisham's draft new Local Plan. The Local Plan will be subject to an Integrated Impact Assessment (IIA) in line with the statutory requirements for plan making, and this assessment will incorporate considerations relevant to Equalities Impact Assessment. The Local Plan will be prepared having regard to findings of the IIA through an iterative assessment process. An interim Integrated Impact Assessment report will be published alongside the draft Local Plan at the next Regulation 18 stage of public consultation.

7. Crime and Disorder Implications

7.1 There are no direct crime and disorder implications arising from this report.

8. Environmental Implications

8.1 There are no environmental implications arising from this report.

Appendix 1 – Draft Local Plan Policies

Draft Policy EC 19 Public houses

- A. Public houses are important community facilities that also support the local economy and should be protected. There will be a presumption against the loss of public houses in Lewisham. Development proposals involving the loss of a public house, including through change of use or redevelopment, will only be acceptable where it is demonstrated that:
- Legitimate ~~reasonable~~ efforts have been made to preserve the facility as a public house, including through evidence of regular maintenance and upkeep;
 - The public house is not financially viable and there is no reasonable prospect of the premises remaining in this use, or an alternative community use, as evidenced through a marketing exercise of a minimum continuous period of three-years; and
 - Feasible options for the re-provision of the public house have been fully investigated, and where these are not considered deliverable sufficient justification is provided.
- B. Development proposals affecting a public house, including its operational and ancillary amenity space, must demonstrate that the viability of the pub will not be compromised and development will not detract from the character and appearance of the building, including any features of historic or cultural significance.
- C. Development proposals involving the replacement or re-provision of a public house must ensure the replacement facility has an appropriate amount and configuration of floorspace to enable the continued viability of the public house.
- D. Where the change of use of a public house is considered acceptable, development proposals will be expected to retain the building and other associated features where these makes a positive contribution to local character, including by their historic, streetscape and townscape value.

Explanation

- Public houses, or pubs, are multi-purpose community facilities that are often integral to the life and identity of Lewisham's neighbourhoods. Many exhibit cultural and historic features that help to foster and reinforce sense of place. Pubs are characteristically inclusive places that contribute greatly to social cohesion, for example, by providing venues for functions, performance space, and informal meeting space for residents and community groups. Pubs also support the local economy and are particularly vital to the visitor and night-time economy. In recent years Lewisham, like many other London boroughs, has experienced a decline in public houses. Recognising the important social and economic role they play, we will seek to guard against the unnecessary loss of these facilities.
- Development proposals involving the demolition or loss of an existing public house, including through change of use, must submit evidence to demonstrate that the pub is not financially viable and there is no reasonable prospect of the premises remaining in this use, or an alternative community use. We will expect to see full details of patronage levels and trading accounts over the past 3 years, including accounts from previous management where appropriate. In addition, applicants must provide a statement documenting the steps taken by the owner or operator to respond to viability concerns, including falling patronage levels and profit margins. This might cover considerations given to business diversification (for example, expanding the food and beverage offer), promotions or building refurbishment. Finally, proposals will need to provide proof of a marketing exercise

covering a minimum continuous period of three-years, including details of commercial agents, advertisements and lease terms offered. During this time the pub must be actively marketing at a reasonable local market rent. We will consider whether any ties or restrictive covenants have affected interest. Proposals will be resisted where there is good reason to believe that the viability of the pub has been compromised by deliberate neglect.

3. Public houses require dedicated operational spaces. They also often feature function rooms or ancillary amenity space, including outdoor gardens, which are critical to supporting their role as community facilities and places of gathering. Where proposals involve a reduction or reconfiguration of such operational and ancillary spaces, it must be demonstrated that this will not have a detrimental impact on the financial viability of the public house. Furthermore, proposals must show that the remaining residual space will be of a sufficient amount and quality to continue to meet the needs of pub users. Operational and ancillary spaces include, but are not limited to, beer gardens, function rooms, kitchens, cellars and accommodation integrated into the building.
4. Where sites are redeveloped, including through comprehensive redevelopment, our priority is to protect pubs particularly where they are of historic, cultural or community interest. However, in certain circumstances it may be acceptable that a facility is replaced or re-provided. Proposals will be required to demonstrate that they have considered all reasonable options for retaining the pub in situ. Where this is not possible, the replacement provision must be designed to a sufficient quality and standard to ensure the continued viability of the pub. This aim of this policy is to ensure there is a genuine intention to retain the facility in viable use, so to prevent against future changes to alternative uses.
5. National planning policy recognises the value of public houses as community facilities. We will therefore seek to protect against their loss, having regard also to Policy CI 1 (Safeguarding and securing community infrastructure). Where the loss of a pub is proposed, proposals must suitably demonstrate that there is similar alternative provision elsewhere in the local area. If there is sufficient evidence to support that the loss is acceptable in principle, proposals will be expected to retain the building and any ancillary land or other features, where these makes a positive contribution to local character.
6. Development proposals involving the loss of public houses listed as Assets of Community Value will be assessed against this and other relevant Local Plan policies.

Draft Policy QD 7 Amenity and agent of change

- A. Development proposals must demonstrate how they will protect and wherever possible enhance the amenity of existing and future occupiers and uses, as well as the amenity of neighbouring properties and uses.
- B. Development proposals will be required to positively address amenity through the design-led process in order to:
 - a. Make appropriate provision of privacy both for users of the development and those in neighbouring properties, ensuring development does not result in unreasonable levels of overlooking;
 - b. Make appropriate provision and seek to optimise outlook for users of the development;
 - c. Ensure adequate levels of daylight, sunlight and open aspects including provision of private amenity space where appropriate; and
 - d. Minimise and appropriately mitigate disturbances associated with the construction and operation of the development including noise, vibration, odour, fumes, dust, artificial light and site waste.

C. When considering the amenity impacts of new development the Agent of Change principle will be applied in accordance with the draft London Plan.

Explanation

1. It is important that development contributes to the delivery of high quality environments that people can enjoy without disturbance and live healthily in. Lewisham is an inner-London Borough with a sizeable resident and visitor population. It also accommodates a wide range of activities and land uses including for housing, industry and employment, transport and open space. In this urbanised setting, it is imperative that development is designed in a way that does not adversely impact on the amenity of people in the Borough at any given time, or on the ability of different uses to continue operating (where they are appropriately located). This is especially for economic, community and cultural uses that positively contribute to the vitality of neighbourhoods.
2. We will expect that all new development protects and wherever possible enhances local amenity. Amenity should be central to the design-led process, with careful consideration given to the layout, design, construction and operation of buildings and spaces, including the public realm. Proposals must provide a sufficient level of information to demonstrate that potential impacts have been identified and avoided or appropriately mitigated. We will resist proposals that are likely to cause unreasonable harm to the amenity of users of the development or occupants and uses in neighbouring properties.
3. Local amenity can be compromised or adversely impacted in a number of ways. Some examples include: the loss of daylight and sunlight to existing properties owing to extensions or new structures; odour from restaurants and other commercial activities; vibration and pollution from industrial uses, railways, and roads; noise from cultural or entertainment facilities; and loss of privacy and diminution of outlook due to insensitively sited and designed development. All proposals for new buildings and uses should assess and proactively respond to local amenity having regard to site-specific circumstances. Compatibility of use should be a key consideration during the initial site selection process.
4. Development proposals must appropriately respond to the immediate setting and wider neighbourhood context. For new housing or other development near residential properties, proposals must ensure provision of adequate daylight, sunlight and outlook. Privacy is another key consideration and new development should not cause significant or unreasonable harm in terms of overshadowing or overlooking. Proposals will be expected to take account of existing and proposed future uses, for example, by considering land use principles established by existing planning consents or strategic site allocations.
5. The draft London Plan introduces the 'Agent of Change' principle. This places the responsibility for mitigating the impact of noise on new development. In practice this means that where new developments are proposed close to existing noise generating uses, they must be designed more sensitively to protect the new occupiers from noise impacts. As well, where new noise generating uses are proposed close to noise sensitive uses the responsibility will be on the new use to protect the existing residents or uses from noise. We will apply the Agent of Change principle in accordance with the criteria set out in draft London Plan Policy D12 (Agent of Change).
6. Noise generating cultural venues such as theatres, concert halls, pubs and live music venues should be protected for the benefit of the wider community and the local economy. Development proposals for schemes in the vicinity of these types of facilities must be designed in ways that ensure established cultural and other venues remain viable, can operate without the threat of closure due to noise complaints and can continue to operate

as they are without licensing restrictions. This is particularly important in Lewisham's Creative Enterprise Zone, where a critical mass of cultural venues and community facilities is necessary to support strategic objectives for this element of the local economy.

7. Noise sensitive development such as housing, hospitals, day centres and schools proposed close to noise-generating uses must include acoustic design measures that are developed within the scheme from an early stage. Even greater care must be taken where it would have a disproportionate effect on more vulnerable people such as the elderly or young children. Measures that could be employed to overcome impacts could include soundproofing or insulation. The Mayor's London Environment Strategy provides further guidance on managing and mitigating noise in mixed-use development and town centre development.
8. We will seek to protect open spaces as tranquil havens with positive soundscapes where people can interact with the natural acoustic environment, including natural sounds, animal vocalisation, weather, water and river flows. Development should recognise and positively respond to the value of tranquil and quiet areas. Opportunities should be taken to protect and enhance these environments for the benefit of the local community and biodiversity.

Draft Policy QD 8 Noise and vibration

- A. Development proposals should be designed to avoid or minimise the harmful impacts of noise and vibration at all stages of the development, having regard to the Agent of Change principle.
- B. New noise and vibration generating development must be appropriately located away from noise sensitive uses and suitably demonstrate that measures will be implemented to mitigate any adverse impacts.
- C. New noise sensitive development should be located away from existing or planned sources of noise pollution. Where this is not reasonably practical proposals must demonstrate that:
 - a. Internal and external noise levels can be satisfactorily controlled and managed; and
 - b. There will be no adverse impact on the continued operation and amenity of adjoining and neighbouring uses, having regard to Policy QD7 (Amenity and agent of change).
- D. A Noise Assessment and/or Vibration Assessment will be required to be submitted with proposals where they are noise sensitive developments or involve a noise or vibration generating use.

Explanation

1. It is important for the mental health and wellbeing of Lewisham's resident and visitor population that noise is managed to acceptable levels. There are a wide range of land uses and activities within the Borough, including significant noise generating uses (such as industrial activities) or buildings that are sensitive to noise by virtue of their users or environment (such as schools, health facilities and housing). This policy seeks to ensure that new development provides for the protection of amenity where there is an interaction between noise generating or noise sensitive uses.
2. New development should be designed to avoid or minimise disturbance from noise pollution and vibration, including by appropriately mitigating impacts on site users and

adjacent land uses. We will seek to ensure that noise is managed to acceptable levels having regard to the relative ambient noise levels and the character of the locality. All proposals should consider noise and vibration in the site selection process and, where necessary, address mitigation measures from the early stages of the design-led process.

3. New noise sensitive development (such as housing and community infrastructure) should be located away or appropriately separated from existing or planned sources of noise pollution. This is especially important where noise could have a disproportionate effect on vulnerable groups such as children, young people or the elderly. Appropriate mitigation measures in the design, internal layout and treatment of the building and façade will be required. This includes adequate sound insulation to minimise the adverse impacts of noise, such as from railways, roads or commercial activities. Consideration should also be given to the provision of natural or mechanical ventilation where, for acoustic reasons, an alternative to opening windows is required.
4. Proposals will be expected to submit a Noise and/or Vibration Assessment where sites are located in high-noise areas or where a new development is likely to generate significant noise. This will enable the consideration of how the existing noise environment affects any proposed noise sensitive development and the potential impact that new noise generating development will have on the local area.
5. The council's Good Practice Guide: Control of Pollution and Noise from Demolition and Construction Sites has been prepared to assist developers and their contractors in ensuring that they carry out their works in the most considerate manner in order to reduce the environmental impact and disturbance arising from their works. Transport for London also provides standing guidance on the Construction Logistic Plan required for major developments and the assessment of traffic movements, which applicants are encouraged to refer.