

Shisha Bars, Lounges and Cafes in Hillingdon



A review by the Residents' and Environmental Services Policy Overview Committee - September 2017

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Contents

Chairman’s Foreword	3
Summary of recommendations to Cabinet	4
Background to the review	7
Evidence & Witness Testimony	10
Findings & Conclusions	17
Terms of Reference	23
Witness & Committee activity	24
References	25
Appendix A – Guidelines for Shisha Premises	26

Chairman's Foreword



Shisha smoking is a social activity which has increased in many urban areas of Western countries and many users are unaware of the risks to health of smoking shisha. Studies have identified growing shisha prevalence, especially amongst young people and University students.

There are misconceptions about the relative safety of shisha smoking – sometimes due to the misapprehension that smoking the tobacco through water is less harmful to health, as cigarette smoking. This is not the case and this needs to be communicated to users with health warnings at premises.

The Committee's review was undertaken to look at the regulatory controls the Council and its partners have in relation to Shisha Bars, Lounges and Cafes in the Borough and to examine the health impact and the nuisance and harm which can be caused by unregulated shisha smoking.

The review focussed on the impact of shisha on all the community and did not focus on one particular group within Hillingdon, although it was accepted that shisha was more popular amongst certain ethnic groups. It was found that this Council and its various services all have a level of control over aspects of shisha, but the review looked to pull together all these controls and to adopt a "One-Council" approach to ensure a co-ordinated effort to regulation.

An important aspect of the review was to look at how we could make the owners of shisha premises aware of their legal and safety responsibilities and to also emphasise the potential health risks associated with shisha, to people who smoked it. As part of this review, the Committee has worked with officers to prepare a guidance sheet for distribution to shisha businesses providing relevant health, legal, licensing and planning information.

I would like to thank officers for their support during the review, and also thank the witnesses and officers who assisted to help the Committee in preparing its findings for Cabinet.

Councillor Michael White

Chairman of the Residents' & Environmental Services Policy Overview Committee

Summary of recommendations to Cabinet

Through the witnesses and evidence received during the detailed review by the Committee, Members have agreed the following recommendations to Cabinet:

OPERATIONAL RECOMMENDATIONS

1

- a) That a definitive list / register of shisha premises be established and maintained to deal with the perceived problem related to the shisha industry and to develop a preventive approach to ensure uncontrolled proliferation of shisha premises does not occur.
- b) That the Council's Anti-Social Behaviour and Environment Team's Out of Hours service, in partnership with Licensing services, subject to capacity within the Teams, conduct regular patrols of existing and all new shisha premises to ensure compliance with legislation relating to nuisance and anti-social behaviour. These visits would also be utilised as an intelligence gathering tool to assist and support partner agencies across the enforcement services.
- c) Environmental Health Officers should maximise communication lines via Health and Safety Liaison Groups and Health and Safety Quadrants to raise shisha issues with colleagues across London and encourage a more consistent enforcement approach.
- d) All Council stop smoking staff should promote advice on shisha smoking and be included in smoking cessation information.
- e) The Council should seek to establish a positive and close relationship with shisha premises to encourage cooperation and compliance.

ENFORCEMENT RECOMMENDATIONS

2

- a) Environmental Health officers could consider using Health and Safety Prohibition Notices if prosecutions for breaching the Smoke free law were too labour intensive.
- b) All Council officers involved in enforcement regarding shisha premises should be made aware of the full extent of powers currently held by planning enforcement officers, including the use of Planning Contravention Notices and Stop Notices, and deploy these powers where necessary. This could take the form of a shared regulatory service protocol.
- c) Enforcement officers should be trained on the health effects of Shisha, especially areas surrounding herbal Shisha, and contribute to health promotion activities whilst inspecting Shisha premises.
- d) Enforcement should be a last resort and officers should liaise with other agencies to maximise legislative powers including powers of closure. Focus should therefore be a reactive response with monitoring of high risk shisha premises.
- e) Liaison should take place with neighbouring local authorities prior to initiating Shisha enforcement campaigns to ensure expansion of the industry does not occur in neighbouring boroughs.
- f) Powers of closure and seizure should extend to Environmental Health Officers if resources do not permit for a synchronised, multi-agency approach.
- g) That carbon monoxide monitors be used as evidence gathering. These should be used to ascertain the level of harm in enclosed smoking venues, as well as assessing the quality of air outside Shisha premises considering the large volumes of smoke (usually greater than one hundred litres per pipe per hour) produced by shisha smoking.
- h) Shisha premises should be monitored for alcohol use inside the pipe and for recreational drug use.
- i) Subject to the feasibility of enforcement, consideration be given by the Licensing Authority to the following:
 - Applying the Smoke free law to pavements considering the large volumes of smoke emitted by shisha smokers per session.
 - Adding a standard condition to street trading licences issued by the Authority for "tables and chairs licensing", whereby the tables and chairs required to be used outside Shisha premises on the public footways need to be licensed.

- Adding a "Challenge 25" condition to a premises licence where Shisha smoking took place, which would encourage anyone who was over 18 years of age, but looked under 25 years of age, to carry acceptable ID when using Shisha.

EDUCATION RECOMMENDATIONS

3

- a) Owners and operators of Shisha premises should be encouraged to learn good management techniques and attend workshops in an attempt to prevent their customers from creating antisocial behaviour.
- b) Secondary schools and colleges should be encouraged to incorporate Shisha smoking into existing tobacco awareness lesson plans.
- c) Shisha premises should be provided with case examples of dangerous health and safety scenarios from other premises in order to educate and emphasise the need to comply.
- d) The Council should also include guidance to Shisha premises on a suggested Shisha pipe cleaning and mouthpiece protocol as part of general advice and guidance to shisha premises.
- e) That a guidelines for Shisha premises document be produced (Appendix A) and published on line which outlines all legislative aspects relating to opening and operating a Shisha premises.

Background to the review

What is Shisha Smoking?

Shisha smoking is a way of smoking tobacco or herbal smoking product (which can be flavoured) through a water pipe or hookah. Shisha pipes use burning pieces of charcoal which heats tobacco and sweetened with fruit syrup or molasses sugar (30% tobacco and 70% honey).



Shisha's inauguration onto the British cafe scenes goes back to the 1990's, where large scale industrialisation of Mo'assel tobacco coincided with increased global immigration. Evidence suggests that only tobacco and non-tobacco (herbal) Mo'assel types are consumed in the UK.

Shisha smoking is a growing concern in urban areas of Western countries across the globe. In the UK, there has been a 210% rise in the number of shisha cafes in recent years, but little research has been conducted on the public health implications of this smoking practice.

Key London-based studies identify growing shisha prevalence, especially among young people, university students and those of ethnic backgrounds typically associated with shisha smoking.

Shisha premises are particularly attractive for young people who smoke under the allure that shisha is safer than cigarettes, and can be hubs for antisocial behaviour. Shisha emanates a cool, aromatic smoke that provides a sensory appeal to its users which contributes falsely to the perception that there is reduced harm in smoking Shisha.

Reason for the Review

The review was undertaken to assess 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 and harm which can be caused by unregulated shisha smoking.

The review focussed on the impact of Shisha on the whole of the community and did not focus on one particular group within the Hillingdon community.

Shisha was originally used by Middle Eastern, North African and Asian community groups. However, recent research has shown that since the introduction of the Smoke free Law in England in 2007, there has been a rise in Shisha consumption. This may be due to the increasing availability of Shisha, as a result of cheaper prices and a growing number of shisha-serving venues.

Shisha smoking is becoming increasingly popular amongst all ethnic groups in the UK and not just people of Middle Eastern descent.

According to the World Health Organisation (WHO), the growing rise of Shisha is due to several factors. These are;

- The introduction of flavoured shisha tobacco with its reduced harshness and perceived pleasant flavour and aroma.
- The misperception that it is “healthier” than cigarette smoke.
- Social acceptance and being an essential part of family, peer and public gatherings and cafes and restaurant culture.
- Internet mass and social media.
- Low cost.
- Lack of shisha specific policy and regulation towards its use.
- Immigration of people from Middle Eastern countries to the European region, the Region of the Americas and the Western Pacific region.

Surveys and research projects have been undertaken within boroughs of London, focusing on different population groups. It has been observed that, although rates were highest among those of Arabic or Asian ethnic origin, the majority of respondents to the survey were White British.

Furthermore, smoking shisha was highest amongst 18-24 years old. Further research from different Local Authorities between 2011-2013 has shown that there is high prevalence of smoking amongst university students, ethnic minorities and males.

Within this context, the approach taken for the review was to look at developing a strategy to:

Educate and Engage – To engage with both shisha smokers and businesses to raise awareness of the health and amenity impacts of shisha smoking, to help drive behaviour change.

Regulate the Activity – A range of regulatory tools could be used to help limit the impact of shisha smoking, involving different services and agencies. The Council needed to look at the best way of utilising its available powers in a coordinated and cost effective way.

Partnership – There is no specific regulatory system in place to manage public shisha smoking, so it is important to develop the Council's relationships with partner agencies, working jointly, sharing learning to ensure a consistent approach to shisha smoking.

Evidence & Witness Testimony

Shisha Bars, Cafes and Lounges in the Borough

Businesses are not required to have a specific licence for shisha smoking, and there is no definitive list of premises in Hillingdon. However, the Council is aware of a number of premises which offer shisha smoking through its licensing, trading standards, planning and enforcement functions.

There were seven established Shisha Bars, Cafes and Lounges in the Borough at the time of the review. However, the Committee was informed that there were probably others which the Council was unaware of. The importance of the local knowledge of Ward Councillors and of the Council's Out of Hours Team could provide information on other unregulated Shisha Lounges within the Borough.

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.

Public Health Implications of Shisha Smoking

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.

The Council’s Director of Public Health reported that smoking shisha can cause high exposure to carbon monoxide (CO), but the amount of CO in water pipes or Shisha smoke depends on the size/ variety of tobacco and charcoal type. Some Shisha tobacco does not contain nicotine, but the reduction of tobacco would be replaced by higher levels of glycerine, which can cause poisoning in the body.

A summary of several studies enables the following estimates to be made: one shisha session, smoked alone for approximately 45 minutes, may produce 22-50 times more tar, 6-13 times more Carbon monoxide (CO) and 1-10 times more nicotine than a single cigarette. Shisha is also known to produce significant levels of cancer-causing chemicals (carcinogens), including 3-39 times more benzo[a]pyrene. Reports also reveal that a Shisha session was equivalent to 100 cigarettes worth of smoke.

There is a common misconception that the smoke passing through the bowl of water ‘filters’ the smoke. In actual fact, it cools the smoke making it more palatable and therefore users deeply inhale and are exposed to ‘longer’ puff sessions. Some evidence suggests the use of illicit drugs with Shisha as well as the water in the bowl being replaced by alcohol.

One of the most serious concerns of Shisha is cancer. The smoke increases the risk of various cancers such as lung cancer and cancer of the mouth. In addition to cancer, there are various gum diseases that are linked to Shisha as well as the development of COPD (chronic obstructive pulmonary disease).

According to a U.S. News & World Report, Shisha also carries a risk of addiction. Shisha is a danger to health because it can lead to daily water pipe use. In just one puff of shisha, the smoker inhales the same amount of smoke as they would inhale from a whole cigarette.

Water pipes or Shisha has the potential for spreading infectious disease (such as oral herpes, cold and flu and even possibly HPV, TB & Hep C) giving that smokers share the same mouthpiece and pipe.

Smoking Shisha while pregnant can cause breathing complication and lower birth weight is also reported among the newborns of Lebanese woman who smokes water-pipes. Shisha emits four times the amount of carcinogens in comparison to a single cigarette. A one hour session creates toxins equivalent to 2-10 cigarette smokers.

Current context and controls the Council has in relation to Shisha Bars

The review was made aware that 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, who gave an overview of their role and activity regarding shisha premises:

Trading Standards

The Committee was informed from a Trading Standards officer that the controls which Trading Standards had, were in relation to the use of tobacco and the sale of tobacco to under 18s, the labelling of the tobacco products and the enforcement of non-duty paid tobacco. Reference was made to Shisha Smoking requiring the same health warning labelling as on cigarette packaging. This could be achieved by putting a health warning on the menu of the establishment and could have similar labelling to cigarettes, to make people aware of the associated health risks for Shisha Smoking.

The use of non-duty tobacco in Shisha bars would ultimately be the responsibility of Her Majesty's Revenue and Customs (HMRC), however, close collaboration took place with Trading Standards and HMRC, on drawing attention to any concerns. Trading Standards controls over tobacco were 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 e.g. 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 e.g. 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 premise, 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 and Environment 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.

Planning Enforcement

The Committee was informed that planning permission was required for the change of use of a property to a Shisha lounge, and for any structure which was built to accommodate Shisha pipe smoking.

In the absence of planning permission, such changes of use and structures were unauthorised and if they resulted in harm to the area, planning enforcement notices could be served on the owner and occupier.

The Council usually only became aware of such structures from complaints from residents. The Committee was informed that the structures became illegal after the expiry of the notice period.

Anti- Social Behaviour and Environment Team

The Committee was informed that the role of officers within the Team is to work with Shisha Bar owners if there had been anti-social behaviour outside establishments. With regard to licensed premises, most of the work of the team centred on noise nuisance and people congregating outside premises.

Licensing Authority

The Committee heard evidence from a Licensing Officer who reported that under Alcohol and Street Trading rules, Shisha premises should be monitored for alcohol use inside the Shisha pipe. Whilst this is currently legal, Council staff should be aware of this practice and report it.

The Committee considered what role the Licensing Authority could take under the Licensing Act 2003 and other relevant legislation. The Committee was informed that Shisha premises constructed on licensed premises could potentially have conditions contained within their licence which would enable Shisha Smoking to take place in an outside area. Joint-working with other Council services could take place regarding the structure which was used for Shisha smoking.

It was considered that there could be other possible conditions which could be added to licenses, on a case-by-case basis, such as:

- Extending the Smoke free law to pavements considering the large volumes of smoke emitted by Shisha smokers per session.
- Consideration could be given to adding a condition to street trading licences issued by the Authority for “tables and chairs licensing”, whereby the tables and chairs required to be used outside Shisha premises on the public footway.
- Adding a "Challenge 25" condition to a premises licence where Shisha smoking took place, which would encourage anyone who was over 18 years of age, but looked under 25 years of age, to carry acceptable ID when using Shisha.

Reference was made to the possible use of legislation such as the Local Authority Act 1990 in relation to the possible Shisha smoking which took place outside cafes and restaurants, on pavements. Conditions could possibly be applied to premises licences in relation to hygiene / cleanliness of shisha pipes.

Members Enquiries and Complaints

The Council has received a number of complaints through the Member Enquiries route regarding various issues relating to Shisha smoking at various establishments in the Borough.

These enquiries / complaints over the last five years are broken down into the following:

- Food, Health and Safety - 2 complaints regarding compliance with smoke free law in relation to an outside enclosure.
- Development Control and Planning Enforcement- 19 complaints relating to various issues concerning planning permissions, serving of enforcement notices, signage, the impact of extra parking from Shisha users and, unauthorised structures for shisha smokers.
- Licensing - 3 complaints regarding premises acting outside of their licensing terms, breaching conditions and issues relating to the close proximity to schools.
- Anti-Social Behaviour and Environment Team - 6 complaints to the Team in relation to late night shisha smoking causing disturbance and nuisance to local residents, the issuing of Noise Abatement Notices, loud music, shouting and threatening and aggressive behaviour.

Examples of current joint working within the Council

To give the Committee an understanding of the joint working which must take place from different services within the Council and other partner agencies, a case study was given on a Shisha Lounge in the Borough, where the Council's Anti-Social Behaviour and Environment Team had received a number of out of hour's complaints. The nuisance had been emanating from a new structure in the grounds of the licensed premises which Council officers had no knowledge of.

This structure was open in parts and had no sound insulation. Various Council services were involved in investigating the structure; planning enforcement, Food, Health and Safety, Licensing, Environmental Protection etc. The result was that it was found that the Shisha Lounge was an

unauthorised structure, there were dangerous electrical installations, and as a result the structure was closed down.

Reference was also made to other Shisha Bars which operated in cramped conditions which could cause a health and safety risk due to the wood, coal, or charcoal which was burned in the Shisha pipe to heat the tobacco and create the smoke.

Adopting a ‘One-Council’ approach

The Committee was informed that the development of a strategy / policy to enable a One-Council approach would benefit officers in terms of dealing with the public health and environmental issues pertaining to unregulated Shisha Bars.

In addition, there is a lack of information at present and to improve joint working within all areas of the Council, a shared updated list of Shisha Bars could be created. The involvement of the Anti- Social Behaviour and Environment Team's Out of Hours officers could help in terms of updating the list, as and when new Shisha Bars were located, whether regulated or unregulated.

The Committee agreed during the review, that education was important, to Shisha Bar owners and to users, to highlight the health and safety risks associated with Shisha Smoking. Included in this was also extending education to schools, to enable the potential dangers of Shisha Smoking to be communicated to young people.

Reference was made to studies which indicated that proximity between Shisha premises and educational establishments could influence the use of Shisha by young people. Research has found that many Shisha smokers had taken their first “puff” in a Shisha Cafe whilst underage. This reinforces the false public perception of the social acceptance surrounding Shisha smoking.

The Committee acknowledged that educational campaigns were required for schools and to the wider public on the risks associated with Shisha smoking.

Findings & Conclusions

Operational

As the Committee was informed during the review, there were seven known, established Shisha Bars, Cafes and Lounges in the Borough. However, through the Council's licensing, trading standards, planning and enforcement functions, officers were aware of a large number of premises which offered shisha smoking. These unregulated establishments could have the potential to cause harm to residents through lack of information on the health risks associated with shisha smoking, together with the potential to cause non-compliance with legislations and regulations by owners of such establishments.

The Council, through its many services, could build up a list of premises in Hillingdon, to enable these establishments to be monitored, to protect residents in the Borough.

Shisha premises do have the potential to being subject to noise-centred anti-social behaviour, with typical opening times extending into the late night and early mornings. There have been a number of complaints from residents regarding anti-social behaviour emanating from premises where shisha takes place.

The involvement of the Council's Anti-Social Behaviour and Environment Team's Out of Hours service, in partnership with licensing services could, as part of their normal patrols, visit shisha premises to ensure that there is compliance with legislation relating to anti-social behaviour and nuisance. This could serve as an information gathering tool, to inform both Council services and partner agencies, of any possible infringements.

The importance of the local knowledge of Ward Councillors and of the Council's Anti-Social Behaviour and Environment Out of Hours Team could provide information on other unregulated Shisha Lounges within the Borough. With this intelligence, a shared updated list of Shisha Bars could be created. The involvement of the Anti- Social Behaviour and Environment Team's Out of Hours officers could help in terms of updating the list as and when new shisha Bars were located, whether regulated or unregulated.

The health risks associated with shisha which are detailed earlier in this report are not publicised to the extent that smoking cigarettes and using tobacco is. The recommendations below ask that shisha smoking, and the potential risks associated, be included in the general advice which is given by the Council's Smoking Cessation service, in conjunction with the NHS. Some other local authorities already included shisha cessation as part of their Stop Smoking Service's marketing campaigns.

Hillingdon, does not have a shisha bar culture on the same level as some areas of the country, however, it is important that close working takes place between the Council and shisha establishments within the Borough which would encourage greater compliance and an

understanding of the requirement for regulation. What was needed was a co-operative approach, with better communication and education on shisha, to residents and users of it.

On the basis of the above, it is recommended that:

1	<ul style="list-style-type: none"> f) That a definitive list / register of shisha premises be established and maintained to deal with the perceived problem related to the shisha industry and to develop a preventive approach to ensure uncontrolled proliferation of shisha premises does not occur. g) That the Council's Anti-Social Behaviour and Environment Team's Out of Hours service, in partnership with Licensing services, subject to capacity within the Teams, conduct regular patrols of existing and all new shisha premises to ensure compliance with legislation relating to nuisance and anti-social behaviour. These visits would also be utilised as an intelligence gathering tool to assist and support partner agencies across the enforcement services. h) Environmental Health Officers should maximise communication lines via Health and Safety Liaison Groups and Health and Safety Quadrants to raise shisha issues with colleagues across London and encourage a more consistent enforcement approach. i) All Council stop smoking staff should promote advice on shisha smoking and be included in smoking cessation information. j) The Council should seek to establish a positive and close relationship with shisha premises to encourage cooperation and compliance.
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Enforcement

The Committee was provided with evidence from a number of witnesses from across a number of Council services, all of which had a role to play in the regulating of shisha premises and smoking. There was an acknowledgement that greater joint working was required which would enable a One-Council consistent approach to dealing with shisha premises and any problems associated with them.

Shisha premises are not covered in any of the use classes as specified in the Town and Country Planning (Use Classes) Order 1987 (as amended) and as such constitute a unique use. The effective use of planning enforcement can often result in the resolution of the breach of planning control and result in the cessation of the unauthorised activity of shisha smoking.

An example of a breach of planning control could arise when premises changed from a restaurant with ancillary shisha use, to a composite use (shisha cafe). This change of use would likely constitute a material change of use for which planning permission may be required, and should the use change in advance of planning permission being granted, the use would be unlawful.

Planning enforcement officers had the use of Planning Contravention Notices and Stop Notices, for unlawful structures or practises which occurred on licensed premises. A Planning

Contravention Notice may only be served when it appears that a breach of planning control may have occurred and officers want to find out more information before deciding what, if any, enforcement action to take. Stop Notices, if served alongside a Planning Contravention Notice can prevent a business from trading within 72 hours.

Another enforcement option which could be used, for breaches of the Smoke free law was Health and Safety Prohibition Notices. If the Council's Environmental Health Officers believed that activities on shisha premises could give rise to a risk of serious personal injury, they may issue a Health and Safety Prohibition Notice. The Prohibition Notice normally requires that the activity should stop immediately. The activity must not resume until steps have been taken to remove or control the risk.

A shared document of enforcement tools could be shared amongst Council Officers who dealt with shisha to enable all possible options to be used if there were breach of regulations or conditions.

Consideration could be given to adding conditions to Premises Licenses to tighten the controls around shisha smoking and ensure shisha takes place in an outside area to premises. "Challenge 25" would be a means of ensuring young people would be prohibited from using shisha.

Other legislation such as the Local Authority Act 1990 could be used in relation to the possible Shisha smoking which took place outside cafes and restaurants, on pavements.

Shisha was included in the 2006 Health Act and subsequent Smoke free law. The Smoke free law appeared to encourage smoking on pavements and did not take into consideration the large plumes of tobacco smoke emitted from shisha pipes compared to the small volume emitted from a cigarette. Smoking on pavements could have inadvertently contributed to shisha's popularity due to unintentional advertising of the product to the general public who would inhale sweet smelling, fruit flavoured and aromatic smoke.

Research has found that smoking shisha puts the user at risk of carbon monoxide poisoning. Carbon monoxide is an odourless, tasteless and poisonous gas which is present in tobacco smoke, including smoke from shisha. Carbon monoxide reduces efficiency in breathing and makes blood stickier, increasing risk of coronary heart disease (CHD) and other circulation problems.

As shisha usually takes place in enclosed areas and the activity generates greater amounts of carbon monoxide than cigarette smoking, there is greater danger of harm to those in close proximity to shisha establishments. Carbon monoxide monitors could be used to assess the quality of air at shisha establishments and to provide evidence on the health risks associated with shisha.

The Committee heard evidence from a Licensing Officer who reported that under Alcohol and Street Trading rules, Shisha premises should be monitored for alcohol use inside the shisha pipe. Whilst this is currently legal, Council staff should be aware of this practice and report it. Related to this was the use of recreational drugs in shisha pipes. There was no local authority intelligence

that recreational drugs were ever being used in shisha pipes, or were used in shisha establishments, but this could be area which could be monitored.

As with many areas within the Council, liaison and co-operation should take place with other local authorities, to make them aware of the proposals of the review and to share best practice and intelligence.

On the basis of the above, it is recommended that:

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- j) Environmental Health officers could consider using Health and Safety Prohibition Notices if prosecutions for breaching the Smoke free law were too labour intensive.
- k) All Council officers involved in enforcement regarding shisha premises should be made aware of the full extent of powers currently held by planning enforcement officers, including the use of Planning Contravention Notices and Stop Notices, and deploy these powers where necessary. This could take the form of a shared regulatory service protocol.
- l) Enforcement officers should be trained on the health effects of Shisha, especially areas surrounding herbal Shisha, and contribute to health promotion activities whilst inspecting Shisha premises.
- m) Enforcement should be a last resort and officers should liaise with other agencies to maximise legislative powers including powers of closure. Focus should therefore be a reactive response with monitoring of high risk shisha premises.
- n) Liaison should take place with neighbouring local authorities prior to initiating Shisha enforcement campaigns to ensure expansion of the industry does not occur in neighbouring boroughs.
- o) Powers of closure and seizure should extend to Environmental Health Officers if resources do not permit for a synchronised, multi-agency approach.
- p) That carbon monoxide monitors be used as evidence gathering. These should be used to ascertain the level of harm in enclosed smoking venues, as well as assessing the quality of air outside Shisha premises considering the large volumes of smoke (usually greater than one hundred litres per pipe per hour) produced by shisha smoking.
- q) Shisha premises should be monitored for alcohol use inside the pipe and for recreational drug use.
- r) Subject to the feasibility of enforcement, consideration be given by the Licensing Authority to the following:
 - Applying the Smoke free law to pavements considering the large volumes of smoke emitted by shisha smokers per session.
 - Adding a standard condition to street trading licences issued by the Authority for "tables and chairs licensing", whereby the tables and chairs required to be used outside Shisha premises on the public footways need to be licensed.

- **Adding a "Challenge 25" condition to a premises licence where Shisha smoking took place, which would encourage anyone who was over 18 years of age, but looked under 25 years of age, to carry acceptable ID when using Shisha.**

Education

One of the aims of the review was to look at ways of engaging with both shisha smokers and businesses to raise awareness of the health and amenity impacts of shisha smoking, and sometimes the anti-social behaviour which can occur, which impacts on residents. There is some misconception that shisha smoking is not as harmful as smoking tobacco. Studies have proved that this is not the case and in fact shisha smoking is even more harmful than smoking tobacco.

The recommendations in this report look at Council officers working with shisha premises owners and engaging with them, providing education and guidance on the "dos and don'ts" of operating shisha premises.

The Committee agreed that education was important, to Shisha Bar owners and to users, to highlight the health and safety risks associated with shisha smoking. Included in this was also extending education to schools, to enable the potential dangers of shisha smoking to be communicated to young people.

Reference was made to studies which indicated that proximity between shisha premises and educational establishments could influence the use of shisha by young people. Research has found that many Shisha smokers had taken their first "puff" in a Shisha Cafe whilst underage. This reinforces the false public perception of the social acceptance surrounding shisha smoking.

A recommendation was the production of a guidelines document which could be distributed to all shisha businesses, which would provide all the necessary guidance and advice, to enable the business to be operated in a responsible and legal manner. This guidance could be put on the Council's website to also inform residents of the health risks associated with shisha and the legal parameters to which shisha bars, cafes and lounges operate.

On the basis of the above, it is recommended that:

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- f) Owners and operators of Shisha premises should be encouraged to learn good management techniques and attend workshops in an attempt to prevent their customers from creating antisocial behaviour.**
- g) Secondary schools and colleges should be encouraged to incorporate Shisha smoking into existing tobacco awareness lesson plans.**
- h) Shisha premises should be provided with case examples of dangerous health and safety scenarios from other premises in order to educate and emphasise the need to comply.**

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| | <ul style="list-style-type: none">i) The Council should also include guidance to Shisha premises on a suggested Shisha pipe cleaning and mouthpiece protocol as part of general advice and guidance to shisha premises.j) That a guidelines for Shisha premises document be produced (Appendix A) and published on line which outlines all legislative aspects relating to opening and operating a Shisha premises. |
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Terms of Reference of the review

The following Terms of Reference were agreed by the Committee from the outset of the review:

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.

Witnesses and Committee activity

The Committee received evidence from the following sources and witnesses:

Witness Session 1 –24 January 2017

Bill Hickson - Anti-Social Behaviour and Environment Team Manager - LBH

Session 2 – 22 February 2017

Bill Hickson - Anti-Social Behaviour and Environment Team Manager - LBH

Noel Kelly - Planning Enforcement - LBH

Ian Meens - Licensing - LBH

Kiran Seyan - Trading Standards - LBH

Nathan Welch - Anti-Social Behaviour and Environment Team - LBH

Viral Doshi - Public Health - LBH - (Written submission)

Session 3 – 27 June 2017

Cllr Dominic Gilham - Chairman of the Licensing Committee

References

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

The Growing Issue of Shisha Smoking in Barnet - March 2016

Appendix A

GUIDANCE SHEET FOR SHISHA PREMISES



Is Shisha covered by the smoke free legislation?

Yes. The Smokefree (Premises & Enforcement) Regulations 2007 prohibit the use of shisha pipes in all enclosed public places and workplaces. The law prohibits the smoking of tobacco and anything that contains tobacco and any other substance. Therefore it applies to all manufactured cigarettes, hand-rolled cigarettes, cigars, herbal cigarettes and pipes, including hookah water pipes, whether or not the particular product being smoked is tobacco or not. Anything that can be smoked is prohibited by this legislation, not just tobacco.

What are the health facts about shisha smoking?

Using a waterpipe to smoke tobacco (or smoke from non-tobacco mixtures) is NOT A SAFE alternative to cigarette smoking. Shisha smokers are at risk of the same kind of diseases as are caused by cigarette smoking, including cancer, heart disease and respiratory disease as well as adverse effects during pregnancy. In addition, the following can be attributed to shisha smoking: Using a waterpipe to smoke tobacco poses a serious potential health hazard to smokers and others exposed to the smoke.

- Shisha smoke (even if the shisha mixture does not contain tobacco) contains high levels of chemicals and poisons, including carbon monoxide and heavy metals.
- Many of these chemicals are known to cause mouth and lung cancers, heart disease, respiratory and other diseases.

- Even though it has passed through water, the levels of toxins in shisha smoke can be as high as or higher than in cigarette smoke.
- Shisha smokers may absorb higher concentrations of these chemicals because of higher concentrations in the smoke itself, or because they may smoke for several hours at a time and may inhale moisturized, less irritating smoke more deeply.
- In a Shisha session lasting 60 minutes, a smoker can inhale as much smoke as a cigarette smoker would inhale from 100 – 200 cigarettes. Shisha and second-hand-smoke.
- The owners of shisha premises, their customers and staff are at risk from second-hand-smoke.
- Non smokers, particularly pregnant women, children and the elderly are at risk from breathing in shisha smoke.
- Smoke free legislation was implemented to protect people from the harmful effects of second-hand-smoke in enclosed workplaces and public places. Second-hand smoke from shisha is an extremely harmful mixture of tobacco smoke (or smoke from non-tobacco mixtures) and smoke from the fuel (charcoal).

Legal Considerations

If you are considering purchasing or converting premises where shisha is to be carried out then we advise you to contact the Council, **BEFORE** you start trading or carry out any refurbishment work, to ensure that the premises meets with building, health and safety, fire, environmental, licensing, smoke free, trading standards and planning legislation. This will avoid unnecessary costs from the outset and also we may be able to assist with the planning and design of your premises.

Under the new Smokefree (Premises & Enforcement) Regulations 2006 nearly all public places and workplaces that are enclosed or substantially enclosed must be smoke-free.

The Health and Safety at Work etc Act 1974 also places a duty on businesses to protect employees, customers and others that come onto their premises to protect them from the harmful effects of second-hand-smoke.

For shisha premises both sets of legislation are equally important and have to be complied with at the proposal stage.

Definition of “enclosed premises” is as follows:

Premises will be considered to be “enclosed” if they have a ceiling or roof, and except for doors, windows or passage ways are wholly enclosed, whether on a permanent or temporary basis.

Definition of “substantially enclosed” is as follows:

- If 50% of the walls or more are missing then it is legal to smoke in the area.
- If more than 50% of the walls are present then it is illegal to smoke in the area.

When determining the area of an opening, no account can be taken of openings in which there are doors, windows or other fittings that can be opened or shut.

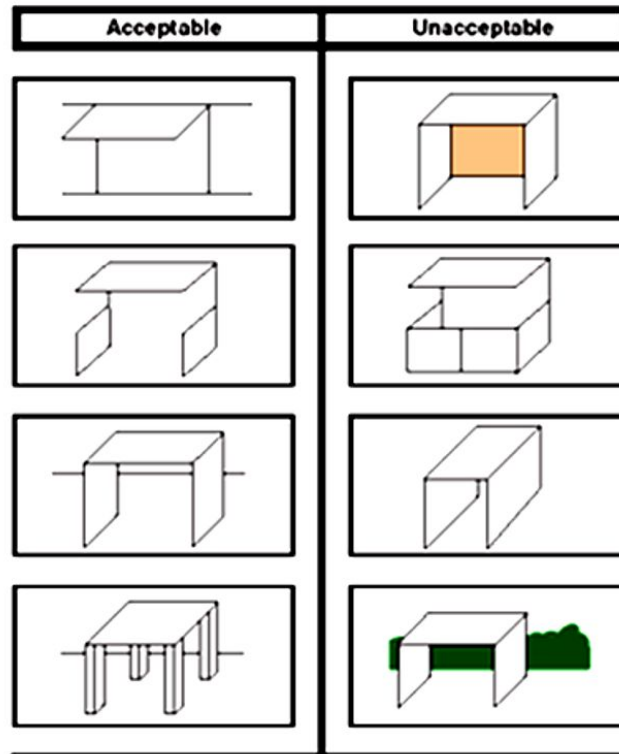
A roof includes any fixed or movable structures, such as canvas awnings.

Any area used for ventilation must not be obstructed by drapes, curtains, etc.

Tents, marquees or similar constructions will also be classified as enclosed premises if they fall within the definition (note that tent/marquee side-panels will be classed as rolled down even when they are rolled up). In general if an opening or cover can be closed, the 50% rule will be calculated on the basis that those openings are closed.

Therefore, anyone considering starting-up a shisha business is advised to get clear and detailed advice **before** carrying out any refurbishment work or entering into legally binding contracts.

Smoking Areas



They must not be "enclosed or substantially enclosed". This means an area with a ceiling or roof - except for doors, windows and passageways - that is either enclosed (permanently or temporarily); or has an opening less than half of the area of its walls. This is commonly referred to as the 50% rule. A roof includes any fixed or movable structure, such as canvas awnings. Tents and marquees etc are also classified as enclosed premises if they fall within the above definition. "Substantially enclosed" premises have a ceiling or roof, but any openings in the walls have a total area which is less than half of the area of the walls, including other structures that serve the purpose of walls and constitute the perimeter of the premises.

When determining the area of an opening, no account can be taken of openings in which doors, windows or other fittings can be opened or shut. A roof includes any fixed or moveable structure or device that is capable of covering all or part of the premises, and includes, for example, a retractable canvas awning.

In summary, a smoking area with a roof and walls where the permanent openings have a total area that is less than the total area of walls will be classified as "substantially enclosed" and will not fall within the provisions of the health legislation as a smoking shelter.

Be aware: You need to make sure that your proposed smoking area is not "substantially enclosed" - if it is then it clearly would not comply with the smoke free regulations and you will be wasting your time and money.

You should also be aware that siting a smoking shelter too close to walls of adjacent buildings or fences could have the effect of enclosing the structure to the point where it would become "substantially enclosed."

The following factors should be considered carefully to ensure your proposal or premises comply fully with all relevant legislation (not just the Smokefree legislation):

Planning/Building Control Implications

Most shisha premises will require planning permission. Premises that are compliant with the Smoke free legislation are not guaranteed to get planning permission. Premises that have planning permission are not exempt from complying with Smoke free law. Also, approval under the Building Regulations may be required.

Trading Standards Implications

It is illegal to sell tobacco containing products to persons under 18 years of age and businesses need to take steps to ensure this does not happen. Refusals must be noted and be made available for inspection. Suitable signage also needs to be in place. Tobacco containing products need to be correctly labelled.

Licensing Implications

Shisha premises constructed on licensed premises for customers and staff should be aware of restrictions within their licence, particularly involving outside areas. It is strongly advised that the Premises Licence holder looks carefully through their licence **before** using the premises for shisha smoking as there may have conditions relating to its use. You are advised to look through your license carefully and check what you are licensed to do and also if you require a variation?

Access/Egress

The shisha premises must be suitable for everyone to use as stipulated in the Disability Discrimination Act 1995 requirements. The design must consider wheelchair users and therefore be safe for people to enter and leave the premises. It must also consider visual and hearing impairments, and consider the following:

- Any steps must have their edges highlighted with high visibility/contrasting Paint. Safety and information signs should be in large print or braille (where possible).
- Signs must be positioned where everyone can read them.

- Careful consideration should also be given to how your customers and employees will enter and leave the shisha premises.
- Consideration should also be given to vehicles – Have you made arrangements for car parking, deliveries etc.

Smoke free Areas

Measures should be taken to prevent smoke getting into smoke free areas by the provision of two sets of doors that are off-set. These doors should be fitted with closures. A minimum distance of 1.5m between shisha premises and adjacent properties or other smoke free areas must be maintained at all times to prevent second-hand smoke issues from arising.

Location Considerations

This is probably the most sensitive issue. The positioning of the shisha premises will have an effect on adjoining properties (this includes commercial premises as well as residential properties).

Location of the proposed shisha premises is extremely important to get right at the planning stage, as putting right any mistakes will be costly.

You also need to bear in mind when the premises will be open, i.e. evenings, at night, or at weekends, as this could lead to complaints of noise nuisance, car parking, antisocial behaviour.

Where possible shisha premises should be sited away from private housing where smoke and noise may become an environmental issue.

It is the responsibility of the business operator and their staff at the premises to ensure noise from all external areas is kept to a minimum. You should display posters asking customers to keep noise to a minimum.

To avoid problems with neighbours the following advice should be considered:

- Shisha premises should be sited away from domestic premises and if possible with some form of insulation between customers and residents to help mitigate the noise.
- Speak to your neighbours and advise them what you plan to do and get their suggestions.
- Display posters advising your customers to keep noise to a minimum in external areas.

Anti-Social Behaviour

Shisha premises will attract young people during evening periods. Try and ensure your premises are monitored and covered by CCTV. This will help ensure groups do not congregate in these areas. This will also avoid complaints to the police or the local authority by your neighbours.

Security and Lighting

You must ensure you have adequate lighting both inside and outside your premises to allow your customers to enter and leave safely, especially if your premises will be used at night. Lighting can also be a statutory nuisance. You should also think about the direction of lighting and where possible direct it away from any domestic premises.

Noise Nuisance

You must minimise (if not eliminate) noise as a result of loud music/TV's, customers entering or leaving, particularly late at night. This will prevent noise nuisance issues with adjoining premises. Where there will be regular entertainment, e.g. music, TV's, etc, be aware that this will increase the amount of noise emanating from your premises. Provision of lobby doors predominantly used as an entrance/egress will minimise any such issues. These doors should be fitted with self-closing devices to help minimise the amount of noise that escapes when people enter or leave your premises. This also has the added effect of limiting smoke getting back into your premises.

Heating

If you wish to provide heating in your smoking area then you must fully consider all the health and safety implications. Where possible you must provide permanently fixed radiant heaters positioned so that they cannot be tampered with or pose a burning danger to those within the smoking area. It would be preferable that the heating levels can be altered (by trained employees only), so a suitable temperature can be reached.

Where possible it is advised that gas heaters should not be used. These can be easily tampered with and pose an additional fire hazard. However, where there is no alternative the duty holder must complete a risk assessment in accordance with current legal requirements. Regular servicing and maintenance by a Gas Safe registered engineer will also be required.

Fire Safety

A fire risk assessment must be carried out by the business. You are advised to contact the London Fire Brigade.

Employees and Other Persons

Shisha businesses need to ensure that employees and any other persons, i.e. contractors, maintenance persons, local authority officers etc that come onto the premises are not exposed to the harmful effects of second-hand-smoke. This is a requirement under the Health and Safety at Work etc Act 1974. To this end, businesses will need to provide suitable and sufficient risk assessments, identify controls, how safeguards are to be implemented etc.

Overall

The onus is the business operator to comply with all of the above requirements