

Notice of Non-key Executive Decision

Subject Heading:	Direction to prohibit the holding of We Are 500 events
Cabinet Member:	The Leader
SLT Lead:	Mark Ansell, Director of Public Health
Report Author and contact details:	Elaine Greenway, Public Health Consultant, Public Health Elaine.Greenway@havering.gov.uk
Policy context:	Pursuant to the Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations (SI 2020/750), the Council has power to give directions including the closure of outdoor events to protect the health of residents.
Financial summary:	Costs included within existing budgets to take this action and defend if challenged in Magistrates Court.
Relevant OSC:	
Is this decision exempt from being called-in?	Yes, it is a non-key decision by a member of staff

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The subject matter of this report deals with the following Council Objectives

Communities making Havering	[✓]
Places making Havering	[✓]
Opportunities making Havering	[]
Connections making Havering	[]

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

RECOMMENDATIONS

Sounds and Scenes Ltd are the organisers and owners of the series of events known as We Are 500 located at Damyns Hall Airfield for a series of five weekends. Three weekends of events are still to be held. The recommendation is that the authority issues a direction to prohibit these licensed events to take place with immediate effect under the Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations (SI 2020/750).

REPORT DETAIL

Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations (SI 2020/750) gives the Council additional powers to give directions including the prohibition of outdoor events to respond to a serious and imminent threat to public health in order to prevent, protect against, control or provide a public health response to the incidence or spread of infection by coronavirus in our area..

All decisions must be rational and evidence based and a direction can only be made when the three conditions outlined below are met.

It is my opinion as Director of Public Health for Havering that these tests can now be met with regard to the series of events organised under the 'We are 500' banner and a direction should be issued to prohibit further events to protect the health of Havering residents and residents further afield until and unless the situation outlined below improves significantly.

1. It responds to a serious and imminent threat to public health.

The number of people testing positive for coronavirus cases in Havering has trebled in the last four weeks. The weekly (2 – 8 Sept) rate of new cases was 32 per 100,000 people versus an England average of 18. As such, Havering is likely to be designated an area of concern as set out in the Contain Framework¹. Furthermore, modelling² suggests that in the absence of further controls, the rate will continue to increase rapidly such that by the end of the month Havering will be at risk of being identified as an area(s) of intervention—where there is need for divergence from the measures in place in the rest of England because of the significance of the spread and the consequent risk to the health of residents.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916993/Weekly_COVID19_Surveillance_Report_week_37_FINAL.pdf

² <http://www.imperial.ac.uk/news/203333/covid-19-hotspots-projected-with-website/>

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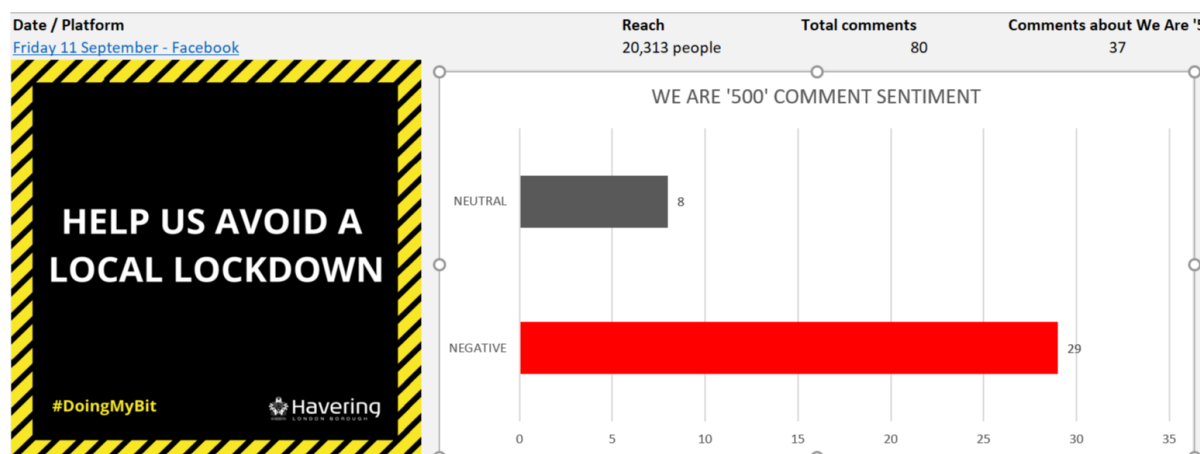
The accelerating increase in positive cases is being seen across London and, as widely reported in the media, Kevin Fenton, London Director of Public Health England, has been saying that local curfews could be introduced across London.

2. That the direction is necessary for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by coronavirus in the local authority's area.

The available evidence, including as described by Public Health England, suggests that Havering is part of a wider rising tide of infection across London as a whole, largely amongst working age white British adults (appendix 2), who acquire the infection at work and whilst socialising and then inadvertently share it further by failing to social distance when visiting family and friends in other households. The organisers of the We Are 500 events have worked constructively with Council officers to design a covid-secure event e.g. attendees to the outdoor, seated event are kept socially distanced in groups of 6 or less. However, these controls cannot be maintained outside the venue when attendees exit en-masse having consumed alcohol to make their way via taxis and public transport home or to other venues. This could be said of hospitality venues elsewhere in the borough, but unlike the We Are 500 events, they do not attract the same size audience: more than 400 per event, drawn from across the country as a whole, including from areas that have higher rates of intervention and others with very low rates of infection (see appendix 1). Hence, these events may facilitate the spread of coronavirus within Havering but also more widely.

Additionally, there is evidence that the ongoing presence of the events is having a detrimental effect on community engagement with and adherence to official guidance on coronavirus. An important established principle in behavioural communications is the concept of equity of endeavour. The Council's public health campaign on coronavirus is entitled Doing My Bit and rests on the work of everyone in the community to act to keep themselves and each other safe. Where residents perceive that individuals or organisations are not "doing their bit" they may be less likely to accept and act on official advice.

The Council published new communications on social media on Friday 11 September advising residents to take action in light of an increase in cases in Havering. A significant proportion of resident comments under that communication raised the We Are 500 festival as an aggravating factor in them not taking Council messages seriously, as shown by:



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3. The prohibitions, requirements or restrictions imposed by the direction are a proportionate means of achieving that purpose.

There are gaps in the national NHS Test and Trace scheme which (a) does not currently undertake nationwide backward contact tracing, and (b) has insufficient capacity to issue tests to all symptomatic individuals which means that close contacts are not being identified and are likely to be socially active.

Despite lack of evidence from NHS Test and Trace, we know from the evidence regarding rates of infection affecting different demographics, that each WeAre500 event in isolation increases the risk to public health in the borough, as appeals to a demographic that is most sharply affected by increased rates of Covid-19, and attended from an audience that is drawn from across the country. It is also the cumulative effect of a series of events that heightens the risks still further, especially with there being no practical means of ensuring that weekend audiences of over 1,100 socially distance from each other outside the venue.

It should be noted that the Council agreed to events being held when infection rates were much lower and NHS Test and Trace programme was not facing the challenges that it is currently. The decision to direct the prohibition of further events may not have been made if there had been no change in factors such as rates of infection. The organisers were made aware that there was a risk that they could be prohibited from continuing with the events if infections were seen to rise. The organisers are welcome to apply to hold further events as and when infection levels reduce.

It should be further noted that this decision is one measure within a wider strategy for outbreak control.

AUTHORITY UNDER WHICH DECISION IS MADE

The Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations (the Regulations) are new and made pursuant to section 45 of the Public Health (Control of Disease) Act 1984(1984 Act). Although the Constitution sets out delegations to officers to exercise specific powers under the 1984 Act, these Regulations are new and exercise of powers within them rest under the general powers granted to the Director of Public Health.

Part 3 of the Constitution (Responsibility for functions) at paragraph 3.6.2 provides that the Director of Public Health shall amongst other functions have responsibility for the *planning for and responding to emergencies involving a risk to public health*. A Direction under these Regulations is a response to an emergency involving a risk to public health.

STATEMENT OF THE REASONS FOR THE DECISION

1. That there is a serious and imminent threat to public health.
2. That the direction is necessary for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by coronavirus in the local authority's area.
3. The prohibitions, requirements or restrictions imposed by the direction are a proportionate means of achieving that purpose.

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OTHER OPTIONS CONSIDERED AND REJECTED

Prior to the decision being made, and in accordance with the government guidance, we have engaged with the organisers of the event to establish whether they would voluntarily cancel the event. A response was received on 17 September during a telephone discussion when the organisers suggested voluntarily cancelling events with effect from 26 September. However, this option was rejected as it would not reduce the risk entailed in the events planned for the weekend of the 19th/20th September.

Variations to the arrangements for the events: given that the event is promoted to a national audience and following discussions with the organisers, this is not a viable option. We remained open to viable alternative arrangements that the organisers may have suggested.

Do nothing: given the rising rate of infections doing nothing is not an option.

PRE-DECISION CONSULTATION

The organisers were contacted by telephone on 15 September and asked to consider whether they would want to cancel future events. It was explained that the Council was in the process of drafting a decision paper to direct the organisers to cancel, but wished to give organisers the opportunity to consider pre-empting that situation. A further discussion was held on 16 September, when the organisers were told to expect a Notice on the morning of 17 September. This was replaced with a further discussion on 17 September when the evidence contained in this paper was shared. The organisers offered to cancel events from 26 September.

Consultation with Havering Clinical Commissioning Group resulted in the following statement

“In light of the increasing rate of the number of people testing positive for coronavirus, and the imminent threat to public health, I support the Council’s position to cancel the WeAre500 series of events planned for 2020.” CCG, 15 September 2020

Consultation with the Police resulted in the following statement

“Thank you for inviting comment in relation to the forthcoming WeAre 500 events and your concerns. As the specific legislation involved in this decision is Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 which is a power which grants Local Authorities the ability to give direction to individual premises, events or outdoor public places we are unable to comment specifically, but appreciate that we should be consulted.

“Whilst we are unable to comment directly on the Risk Assessment as this is not within our professional capacity, we are certainly sympathetic to the Council’s concerns of the risk of infection at a time when this is rising significantly within Havering and in other areas. Given the numbers who may attend, we can see that ingress and egress arrangements may be particularly problematic in terms of being able to ensure social distancing and where this may be a consideration for you to use this power and subsequent closure.” MPS, 17 September 2020

Consultation with Public Health England resulted in the following statement

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“I agree with the risk assessment which Havering Council have carried out around this series of events planned over the next few weeks. The organisers have planned for the venue to comply with guidance on being COVID-19 secure but will not be able to manage ingress and egress of the public who wish to attend. With increasing rates of infection in Havering this will increase the risk of transmission with the local community and on to other areas.” PHE, 17 September 2020

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: Elaine Greenway

Designation: Consultant in Public Health

Signature:

Date:

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

Regulation 2 of The Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020 states the following:

“A local authority may give a direction under regulation 4(1), 5(1) or 6(1) only if the authority considers that the following conditions are met—

- (a) that giving such a direction responds to a serious and imminent threat to public health,*
- (b) that the direction is necessary for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by coronavirus in the local authority's area, and*
- (c) that the prohibitions, requirements or restrictions imposed by the direction are a proportionate means of achieving that purpose”*

Regulation 5 – Directions relating to Events

Under Regulation 5 a local authority may, subject to Regulation 2, give a direction imposing prohibitions, requirements or restrictions in relation to the holding of an event in its area.

A direction may be given in relation to (a) a specified event, or (b) events of a specified description

LBH must obtain evidence so that it is satisfied that conditions 1, 2, 3 have been met before giving such a direction. Government guidance states that Local Authorities will need to consult the police, Public Health England, the Director of Health, local health officers, NHS Test & Trace for their advice before making a direction under the Regulations

Review of Direction

A local authority must review a direction it has issued under the Regulations at least every seven days and determine whether the three conditions for making the direction continue to be met. If at any stage the threshold for restrictions is no longer met the direction should be immediately revoked or replaced with a direction which meets the threshold set out above.

Public Sector Equality Duty

Prior to issuing a direction, local authorities must have due regard to the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010 and should consider

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carrying out an equalities impact assessment to determine whether the measure may disproportionately affect people with protected characteristics.

Notice of the Direction

Notice of the direction should be issued by LBH in the form of a written letter and/or email communication to the organiser of the event and/ or the owner or occupier of the premises where the event is being held, or any other person involved in holding the event, clearly stating the powers under which the direction is being made, the reason for invoking, or revoking, the direction, the date and time on which the prohibition, requirement or restriction comes into effect, and the date and time on which it will end.

Right of Appeal

The recipient of a direction has the right of appeal through the magistrates' courts. An appeal should be lodged as soon as possible and, where possible, submitted within the 7-day review period.

Where a direction is made, the owner or occupier of a premises must fulfil the requirement of the direction until the appeal is resolved

FINANCIAL IMPLICATIONS AND RISKS

In the event of a successful challenge, there will be financial consequences in defending the challenge.

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

There are no human resources implications and risks.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

This decision seeks to avoid risks to the population as a result of transmission of Covid-19. In the event that transmission rates increase, this impacts the whole population who will be affected both by direct and indirect harms. In addition, it is the case that there are some groups who are more likely to experience serious illness and death as a result of being infected by Covid-19, including older people and some ethnic groups. It is also the case that some socio-economic groups are more likely to be financially disadvantaged as a result of exposure to Covid-19 and subsequent requirement to self-isolate, resulting in a disproportionate impact on earnings.

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It is expected that there will be financial consequences for those individuals who have been recruited to staff the event.

BACKGROUND PAPERS

None

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Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Delete as applicable

~~Proposal NOT agreed because~~

Details of decision maker

Signed



Name: Mark Ansell

Cabinet Portfolio held:

CMT Member title: Director of Public Health

Head of Service title:

Other manager title:

Date: 17/9/20

Lodging this notice

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Democratic Services Officer in Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on
17 September 2020 _____

Signed _____ A Beesley _____

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Appendix 1: Analysis of postcode data of those booking tickets for Weekend 12-13 September 2020

The tables below summarise information provided by the organisers on the location of those who booked tickets for the weekend of 12-13 September. This shows that tickets have been booked by people living in areas where there are high rates of infection, for example Hertsmere (53.7 / 100,000), Wirral (43.6 / 100,000) and Leicester (43.1 / 100,000) and low rates of infection, such as Rutland (2.5 / 100,000), Southampton (4.4 /100,000) and Medway (6.1 /100,000).

Sources

- National Covid-19 surveillance report: 11 Sept 2020 (Week 37)
<https://www.gov.uk/government/publications/national-covid-19-surveillance-reports>
- 20200915 Regional SAR London 15 Sept 20
<https://extranet.phe.gov.uk/sites/C19LASEC/layouts/15/start.aspx#/SitePages/Previous%20Reports.aspx>
- PHE weekly national covid 19 report – 11th September Week 37 report (with data up to week 36)

Sat Day

Row Labels	Count of Postcode
Thurrock	7
Havering	5
Mid Sussex	4
Dartford	2
Kent	2
Croydon	2
Epping Forest	2
Kingston upon Thames	2
Maldon	2
Stevenage	2
Exeter	2
Berkshire	2
Three Rivers	2
Tower Hamlets	2
Basildon	1
Rochford	1
Chelmsford	1
Bedford	1
St. Helens	1
Ealing	1
Cardiff	1
East Northamptonshire	1

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Norfolk	1
Ely	1
South	
Buckinghamshire	1
Enfield	1
Sutton	1
Barnet	1
Maidstone	1
Bexley	1
Merton	1
Bournemouth	1
Newham	1
Barking and Dagenham	1
Nottingham	1
Haringey	1
Runnymede	1
Harrow	1
St Albans	1
Hastings	1
Corby	1
Brent	1
Crawley	1
Brentwood	1
Broadstairs	1
Greenwich	1
Hackney	1
(blank)	
Grand Total	71

Sat Night

Row Labels	Count of Postcode
Havering	8
Medway	4
Chelmsford	4
Thurrock	3
Merton	3
Hampshire	3
Tower Hamlets	3
St Albans	2
Rochford	2
Croydon	2

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Hackney	2
Southend-on-Sea	2
Castle Point	2
Colchester	2
Barking and Dagenham	2
North West Leicestershire	2
Bedford	2
Rushmoor	2
Basildon	2
Spelthorne	2
Lambeth	2
Greenwich	2
Leicester	2
Wandsworth	2
Watford	2
Kennet	2
Harrow	2
Cambridge	1
Dudley	1
Daentry	1
Hammersmith and Fulham	1
Stevenage	1
Barnet	1
Cardiff	1
Haringey	1
Derby	1
Braintree	1
Elmbridge	1
Cherwell	1
Exeter	1
Hertsmere	1
Welwyn Hatfield	1
Chiltern	1
Reigate and Banstead	1
City of London	1
Rugby	1
Brentwood	1
South Oxfordshire	1
Broxbourne	1
East Hertfordshire	1
Dacorum	1
Staffordshire	1

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Mid Sussex	1
Sutton	1
Milton Keynes	1
Gravesham	1
Newham	1
Guildford	1
Dartford	1
Wycombe	1
Nottingham	1
Peterborough	1
(blank)	
Grand Total	103

Sun

Row Labels	Count of Postcode
Havering	7
Hampshire	7
Chelmsford	4
South Holland	4
Colchester	3
Braintree	3
Boston	3
Nuneaton & Bedworth	2
Sussex	2
South Kesteven	2
Greenwich	2
Northampton	2
Tower Hamlets	2
Brentwood	2
Thurrock	2
South Oxfordshire	2
Bassetlaw	2
Brighton and Hove	2
Norfolk	2
Harlow	2
Medway	2
Southwark	1
Wolverhampton	1
Gloucester	1
Hackney	1
Ealing	1
Caerphilly	1

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Tendring	1
Haringey	1
Welwyn Hatfield	1
Castle Point	1
Sandwell	1
Bournemouth	1
East Hertfordshire	1
Hertsmere	1
Suffolk	1
Kennet	1
Three Rivers	1
Kensington and Chelsea	1
Waltham Forest	1
Lambeth	1
West Oxfordshire	1
Leicester	1
Bromley	1
Lewisham	1
Dartford	1
Maldon	1
South Northamptonshire	1
York	1
Southampton	1
Ashford	1
Stockton-on-Tees	1
Neath Port Talbot	1
Enfield	1
Bexley	1
Test Valley	1
Croydon	1
Folkestone	1
Nottingham	1
Vale of White Horse	1
Dacorum	1
Wellingborough	1
Powys	1
West Norfolk	1
Redbridge	1
Wirral	1
Rhondda Cynon Taf	1
Worthing	1
Rotherham	1

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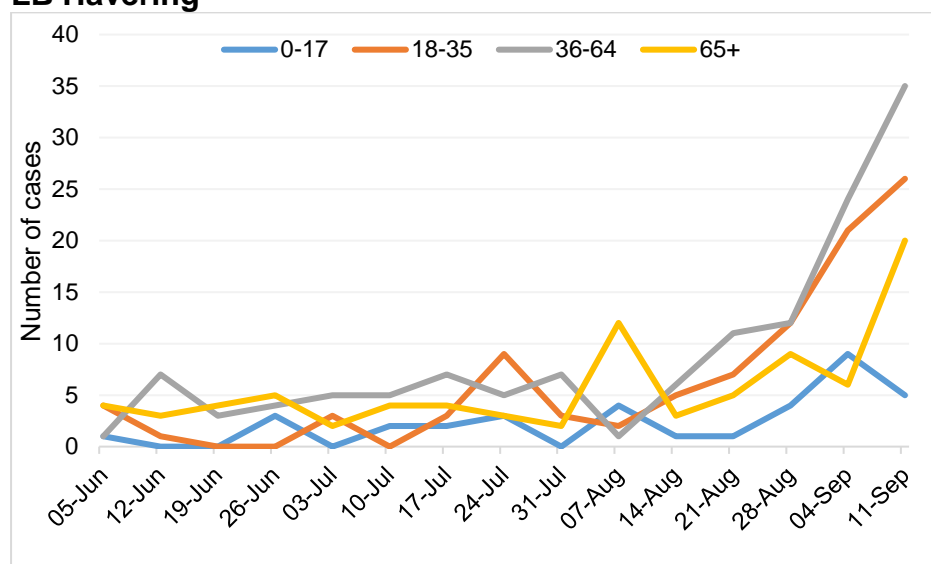
Rutland	1
Merton	1
(blank)	
Grand Total	109

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Appendix 2: New cases and incidence rates in Havering by age group as of 11/09/2020

The majority of new cases in Havering since mid-August have been of persons aged 18-64 (working age). In the last one week over 70% (61/86) of all cases were from the same age group (Figure 1).

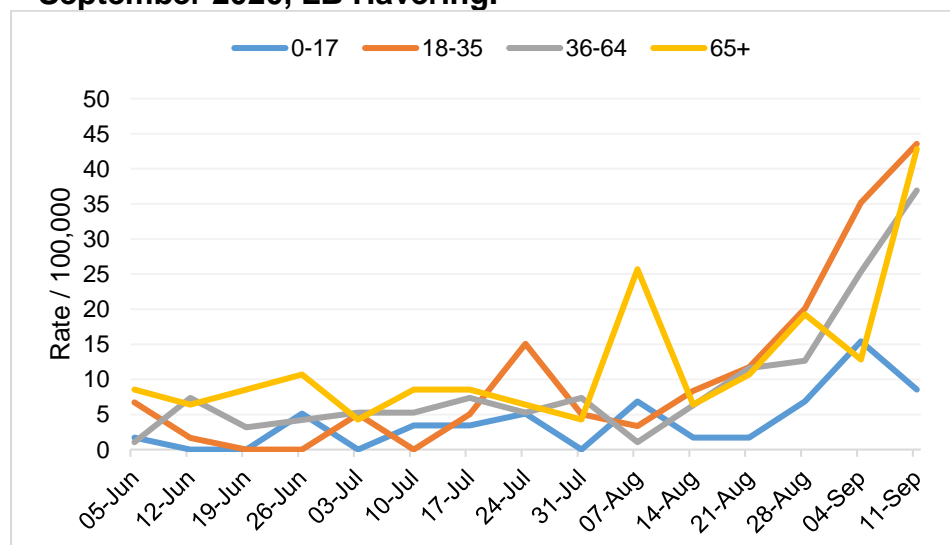
Figure 1: Weekly number of cases by age group June – September 2020, LB Havering



Source: Public Health England

Weekly incidence rates by age group also show persons aged 18-64 have had the highest rates in the last 3 weeks. The latest data shows persons aged 18-35 (43.6/100,000) had the highest incidence rate as compared to other age groups (Figure 2).

Figure 2: Weekly Incidence rates / 100,000 population by age group June – September 2020, LB Havering.



Source: Public Health England