

BRIGHTON & HOVE CITY COUNCIL
LICENSING COMMITTEE (LICENSING ACT 2003 FUNCTIONS)

3.30PM 25 JUNE 2009

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillors Mrs Cobb (Chairman), Fallon-Khan, Fryer, Hawkes, Kitcat, Marsh, Pidgeon, Simson, C Theobald, Watkins, West and Young

Apologies: Councillors Lepper, Harmer-Strange, Hyde, Older and Wrighton

PART ONE

1. PROCEDURAL BUSINESS

1a Declarations of Substitutes

- 1.1 Councillor Fryer declared that she was substituting for Councillor Wrighton.
- 1.2 Councillor Fallon-Khan declared that he was substituting for Councillor Older.

1b Declarations of Interests

- 1.3 There were none.

1c Exclusion of the Press and Public

- 1.4 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Licensing Committee (Licensing Act 2003 Functions) considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100(1) of the Act).
- 1.5 **RESOLVED** – That the press and public be not excluded.

2. MINUTES OF THE PREVIOUS MEETING

- 2.1 **RESOLVED** – That the minutes of the previous meeting held on 24 April 2009 are signed by the Chairman as a correct record.

3. CHAIRMAN'S COMMUNICATIONS

- 3.1 The Chairman advised Members that the full report for the Health Impact Assessment will be reported to the Alcohol Strategy Group on 4 August 2009 and will be submitted to the Licensing Committee (Licensing Act 2003 Functions) at 26 November 2009 meeting. Additional work had been identified including looking at potential indicators and baseline information to assess the effects of flexible licensing hours.

4. CALL OVER

- 4.1 **RESOLVED** – That all items are called over.

5. PUBLIC QUESTIONS

- 5.1 Mr Pennington asked the following question at the Committee meeting:

“I ask this question on behalf of Sussex Aphasia Self-Help, and Speakability, the national charity.

Aphasia is the communication problems which sometimes follow a stroke, head injury, brain tumour or other neurological condition.

We know what we want to say, but we just have trouble finding the right words. We can enjoy social activities just like everyone else if communication tools are available.

What steps can the Council, as a Licensing Authority, take to advise coffee shop and café owners to provide such communication tools, such as illustrated/photo hand-held menus?”

- 5.2 The Chairman responded with the following answer:

“The Council welcomes its general duty to promote disability equality. It also uses its influence with partners to further diversity principals beyond its own operations.

Unfortunately, as a Licensing Authority, the Council is subject to limitations. It can only regulate licensable activities and cafes are only subject to premises licensing if selling alcohol or providing regulated entertainment or late night refreshment. The Council's decisions must also be grounded on one or more of the licensing objectives.

The Council, as a matter of policy, will remind applicants of the requirements of disability discrimination legislation although there are no powers to provide additional communication tools.

Where citizens feel they have been subject to discrimination in the provision of services, it is recommended that they consider seeking independent legal advice.”

5.3 Mr Pennington asked the following supplementary question:

“If this is the case, could I ask that this question be asked at the Full Council meeting or with the Cabinet?”

5.4 The Solicitor to the Committee referred to the Constitution of Brighton & Hove City Council and stated that the Chief Executive may reject a question if it is substantially the same as a question that has been put at a meeting of the Council, the Cabinet, a Cabinet Member Meeting, a Committee Meeting or a Sub-Committee Meeting in the past six months.

5.5 Councillor Hawkes stated that it was unfortunate that the question could not be asked at another Committee meeting if the Licensing Committee (Licensing Act 2003 Functions) could not give a satisfactory answer.

5.6 Councillor Marsh agreed and fully supported the issues that had been raised by Mr Pennington, which she felt were particularly applicable to licensed premises. She did not believe that the question had been answered satisfactorily by the Council, and warranted further investigation. She stated that the Committee should press the issue forward on behalf of Mr Pennington, and was disappointed that there seemed to be no avenue for this within the Constitution.

5.7 Councillor Watkins agreed and did not feel there was a problem with taking the question to another Committee meeting. He asked if it was possible for the Licensing Committee to refer the matter to Full Council under item 8: Items to go forward to Council. The Solicitor to the Committee advised Members that this provision only applied to items where decisions could be made by the Committee under delegated powers, and did not relate to public questions.

5.8 Councillor Mrs Theobald agreed that this was a matter of great interest and felt that the Council should be encouraging café owners to implement the changes suggested by Mr Pennington, and to provide further help to Aphasia sufferers.

5.9 Councillor Simson stated that as Cabinet Member for Community Affairs, Inclusion and Internal Relations, she had listened with great interest to the question from Mr Pennington, and the feelings of Councillors, and wanted to assure the Committee that she would be taking this issue forward under her portfolio.

5.10 Councillor Pidgeon noted that he had worked for many years to promote equalities issues for disabled and blind people and felt strongly that this issue should be brought to the attention of Cabinet.

5.11 Councillor West believed there was a problem with the procedures if it meant that this issue could not be added to the agenda of any other meeting, and Councillor Marsh agreed, highlighting that there were inadequacies in the Constitution if this was the case. Councillor Marsh felt that a member of the public had asked a valid question in good faith, but had been advised wrongly as to where the question should be asked. She added that it was unfair of the Council to reject the question simply because it had been asked at the Licensing Committee (Licensing Act 2003 Functions) first.

- 5.12 Councillor Kitcat agreed and stated it was fortunate that the relevant Cabinet Member sat on the Committee and was willing to take the issue forward. He felt it would have been a difficult situation to resolve had the relevant Cabinet Member not been present. Councillor Kitcat noted that the twelve-month review of the Constitution was pending and the issue of public questions and their limitations needed to be looked at carefully under this review.
- 5.13 The Chairman stated that the issue could be carried forward by Members of the Committee regardless of whether a Cabinet Member was present at the meeting or not, and she felt that given the strength of feeling on the issue, this would be the case in any event.
- 5.14 Councillor Simson assured Members that she would take this issue forward, hopefully in time for the next Cabinet meeting. Mr Pennington suggested amending it to "What steps can the Council, as a Licensing Authority *or otherwise*, take...".
- 5.15 The Solicitor to the Committee apologised to Mr Pennington and stated that the procedures were not meant to be obstructive. She hoped he was confident that the issue would be taken forward in the appropriate manner and dealt with to the satisfaction of Members.

6. LICENSING ENFORCEMENT POLICY

- 6.1 The Committee considered a report from the Director of Environment on the Licensing Enforcement Policy (for copy see minute book).
- 6.2 The Head of Environmental Health and Licensing began by stating that this report followed a consultation period on the policy and was needed to ensure transparency, consistency and efficiency when dealing with licensing enforcement. The policy had been updated after DCMS guidance was issued last year, and the Licensing Panels were already using this guidance in their determinations of licence applications, variations and reviews.

Responses to the consultation were listed in the report, and it was felt that the policy addressed and incorporated the recommendations put forward, and so the recommendation from Officers was for adoption of the policy.

- 6.3 Councillor West was concerned that the changes would have a significant impact on Officers' time, and asked if the department had the capacity to implement this policy. The Head of Environmental Health and Licensing stated that budgets were always tight, but a restructure of the department had taken place last year and staff members were being reduced in some areas via natural wastage to enable an increase in other areas, such as the Noise Patrol Team. There was a risk based Licensing Enforcement Programme, which enabled the department to manage its programmed and non-programmed cases on a yearly basis and the Head of Environmental Health and Licensing was confident that the department were responding well to current demands.
- 6.4 Councillor Fryer noted that non-alcohol related problems were not addressed in the policy and stated that there was a particular instance in her ward of a premises trading

late night refreshments beyond their permitted hours, but there seemed to be no enforcement action taking place. The Head of Environmental Health and Licensing noted the difference between non-compliant premises that were causing suffering to the community and non-compliant premises that were not causing suffering. The aim of the policy was to target resources at those premises causing suffering and where demonstrable harm was being created.

- 6.5 Councillor Watkins welcomed the risk based approach that was being taken to the workload for the department, and asked how compatible this programme was with other organisations that the department worked with. The Head of Environmental Health and Licensing stated that the department worked very well with other responsible authorities and many different aspects of licensing issues were discussed and dealt with regularly by all parties.
- 6.6 Councillor Marsh referred to the lead agency tables contained within the policy and noted that proxy sales of alcohol to children listed Sussex Police as the lead agency. She had been told in the past that this was monitored by Trading Standards and asked for guidance on this area. The Head of Environmental Health and Licensing stated that generally sales of alcohol to minors in off-licensed premises were dealt with by Trading Standards and in on-licensed premises by Sussex Police. He noted that whilst the tables were useful in identifying the agency primarily responsible for the issue, any responsible authority could take action where they felt it was appropriate. He added that Trading Standards generally conducted business support training and guidance after the review process to ensure compliance with the licensing objectives.
- 6.7 **RESOLVED** – That the committee adopts the Licensing Enforcement Policy (for copy see minute book).

7. SCHEDULE OF LICENSING REVIEWS

- 7.1 **RESOLVED** – That the Committee notes the Schedule of Licensing Reviews.

8. SCHEDULE OF LICENSING APPEALS

- 8.1 The Solicitor to the Committee stated that two further appeals had been lodged with the Magistrates Court following publication of the Committee papers, and these were for Mesopotamia, 17 York Place, Brighton and Three To Four, 3-4 Western Road, Hove.
- 8.2 Councillor Pidgeon asked for details on the appeal hearing that Tesco had recently won against the Council. The Solicitor replied that whilst the case for the Council had been strong and fought well, with several residents and Councillor Fryer attending as witnesses, the Magistrates Court had decided that the conditions offer by Tesco during the appeal process would be satisfactory, and the store would not increase the general consumption of alcohol in the St James' Street area.
- 8.3 Councillor Pidgeon asked what the costs were for the appeal and the Solicitor replied that £6,000 had been spent on legal representation for the Council. Although Tesco won the appeal they did not claim for costs and were not awarded any by the Magistrates Court.

- 8.4 The Chairman expressed concern that the Magistrates Court often went against decisions made at Panel hearings, regardless of how well and carefully considered they were. Councillor Watkins agreed and was concerned that the Magistrates Court was an undemocratic way of deciding on difficult licence applications, as members of the public were completely removed from the process.
- 8.5 The Solicitor noted that there had been no criticism of the Panel decision by the Magistrates Court, as at the time of the Panel's decision Tesco had not proposed the number of conditions that were subsequently placed on the licence.
- 8.6 Councillor Young asked that the conditions be monitored closely to ensure the residents did not experience any negative impact, and the Head of Environmental Health and Licensing replied that if it appeared that licensing conditions were breached the department would take the necessary enforcement action.
- 8.7 Councillor Fryer noted that some conditions offered by Tesco during the appeal process were worse than what had been offered at the Panel hearing, including an extended opening time until 23:00 hours. She felt that the original decision had been disregarded by the Magistrates Court, and stated that this frequently happened during appeal hearings. She felt that this issue needed to be addressed and proposed that the Committee write a letter to the Government expressing their concerns.
- 8.8 The Solicitor agreed that it could be frustrating when decisions were changed at appeal hearings, but noted that it was a de novo hearing where new evidence could be introduced and considered.
- 8.9 The Head of Environmental Health and Licensing advised a cautious approach if the Committee were minded to write a letter to the Government, as there was a danger that the Magistrates Court could become alienated by this action. He noted there had been four appeals, with three allowed and one modified and he did not feel this was enough evidence to draw conclusions.
- 8.10 Councillor Mrs Theobald expressed concern that the premises was now allowed to open longer than any other off-licence premises in the area and the alcohol sold could be cheaper and would therefore result in increased sales in the area. She felt at times it was better to approve the application and negotiate better conditions than to rely on the Magistrates Court.
- 8.11 Councillor Watkins felt there was a danger that decisions at Panels could be influenced by the prohibitive costs of fighting an appeal at the Magistrates Court, especially when the Council lost so many cases.
- 8.12 Councillor Fallon-Khan noted that even with the statistics available the Council was still losing 75% of appeals that went to the Magistrates Court, and he felt that a letter should be written expressing concern on this matter.
- 8.13 Councillor Hawkes stated that the Cabinet Member for Environment sat on a representative body with other Licensing Authorities. She felt that he could be asked to lobby on this issue at that body, as it was likely that other authorities were experiencing the same problems.

- 8.14 Councillor Simson suggested that the Committee approach LACORS on the issue. She did not think decisions at Panels were ever influenced by the threat of an appeal and felt that the decisions so far had been excellent. Councillor Watkins agreed that they had been, but was worried that future pressures on budgets may have an unwarranted effect.
- 8.15 The Solicitor to the Panel stated that she would soon join a licensing lawyers' networking group and offered to raise the issue there to find out what the experience of other local authorities was. She would then report her initial findings back to Committee for further action.
- 8.16 **RESOLVED** – That the Schedule of Licensing Appeals is noted.

9. GAMBLING ACT 2005 SCHEDULE

- 9.1 **RESOLVED** – That the Gambling Act 2005 Schedule is noted.

10. ITEMS TO GO FORWARD TO COUNCIL

- 10.1 There were none.

The meeting concluded at 4.15pm

Signed

Chairman

Dated this

day of