



**Brighton & Hove
City Council**

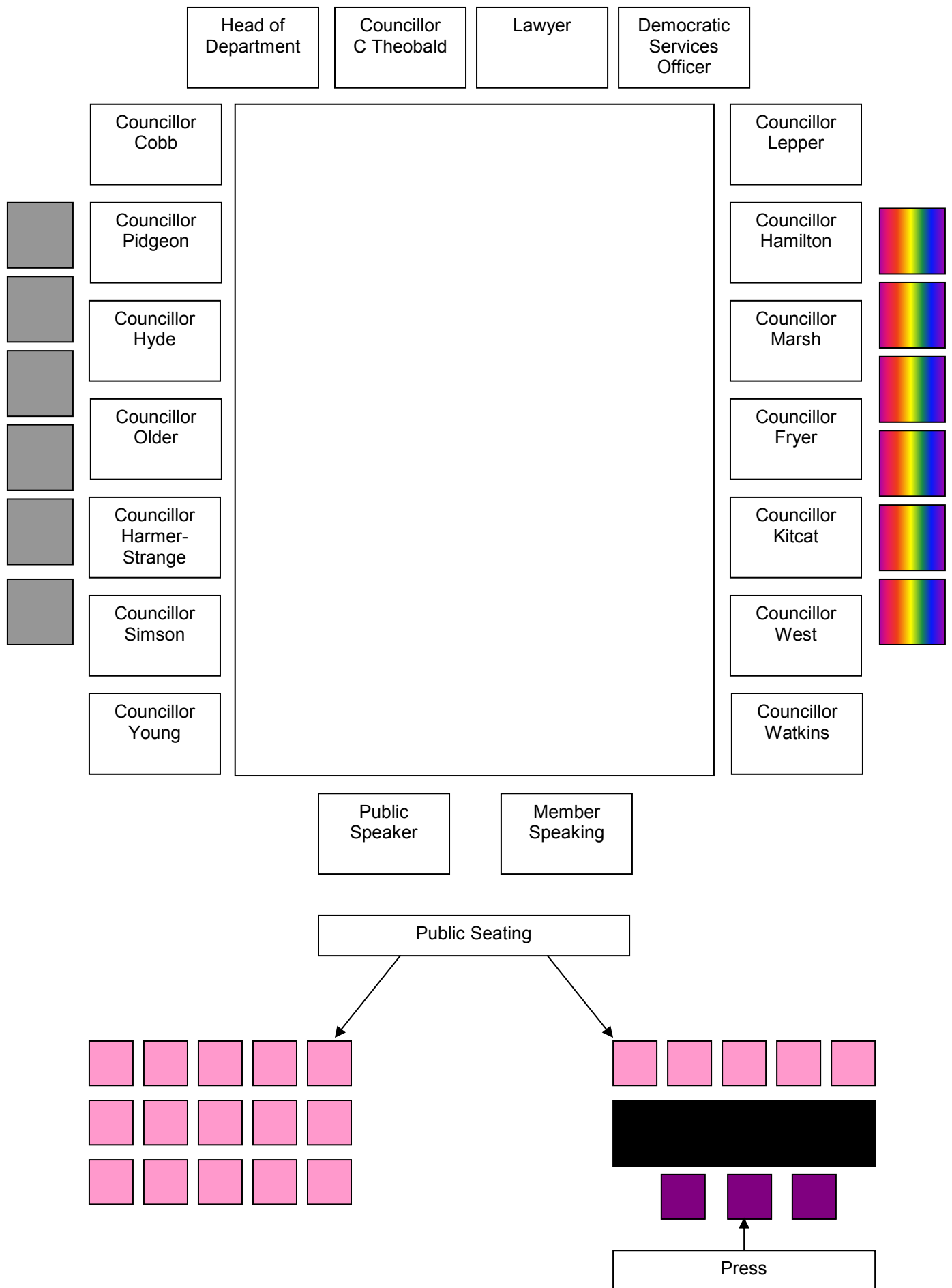
Licensing Committee

(Licensing Act 2003 Functions)

Title:	Licensing Committee (Licensing Act 2003 Functions)
Date:	25 June 2009
Time:	3.30pm (or conclusion of Non 2003 Committee)
Venue	Council Chamber, Hove Town Hall
Members:	Councillors: Mrs Cobb (Chairman), Lepper (Deputy Chairman), Harmer-Strange, Hawkes, Hyde, Kitcat, Marsh, Older, Pidgeon, Simson, C Theobald, Watkins, West, Wrighton and Young
Contact:	Jane Clarke Democratic Services Officer 01273 291064 jane.clarke@brighton-hove.gov.uk

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Democratic Services: Meeting Layout



AGENDA

Part One

Page

1. PROCEDURAL BUSINESS

- (a) Declaration of Substitutes - Where Councillors are unable to attend a meeting, a substitute Member from the same Political Group may attend, speak and vote in their place for that meeting.
- (b) Declarations of Interest by all Members present of any personal interests in matters on the agenda, the nature of any interest and whether the Members regard the interest as prejudicial under the terms of the Code of Conduct.
- (c) Exclusion of Press and Public - To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

NOTE: Any item appearing in Part 2 of the Agenda states in its heading either that it is confidential or the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.

A list and description of the categories of exempt information is available for public inspection at Brighton and Hove Town Halls.

2. MINUTES OF THE PREVIOUS MEETING

1 - 6

Minutes of the meeting held on 24 April 2009 (copy attached).

3. CHAIRMAN'S COMMUNICATIONS

4. CALL OVER

5. PUBLIC QUESTIONS

7 - 8

(The closing date for receipt of public questions is 12 noon on Thursday 18 June 2009).

One public question has been received before publication date:

- (i) Mr R Pennington.

6. LICENSING ENFORCEMENT POLICY

9 - 34

Report of the Director of Environment (copy attached).

Contact Officer: Tim Nichols

Tel: 29-2163

Ward Affected: All Wards;

LICENSING COMMITTEE (LICENSING ACT 2003 FUNCTIONS)

7. SCHEDULE OF LICENSING REVIEWS 35 - 36

Report of the Director of Environment (copy attached).

Contact Officer: Jean Cranford *Tel:* 29-2550
Ward Affected: All Wards;

8. SCHEDULE OF LICENSING APPEALS 37 - 38

Report of the Director of Strategy & Governance (copy attached).

Contact Officer: Rebecca Sidell *Tel:* 29-1511
Ward Affected: All Wards;

9. GAMBLING ACT 2005 SCHEDULE 39 - 40

Report of the Director of Environment (copy attached).

Contact Officer: Jean Cranford *Tel:* 29-2550
Ward Affected: All Wards;

10. ITEMS TO GO FORWARD TO COUNCIL

To consider items to be submitted to the 16 July 2009 Council meeting for information.

In accordance with Procedural Rule 24.3a the Committee may determine that any item is to be included in its report to Council. In addition each Minority Group may specify one further item to be included by notifying the Chief Executive by 10.00am on 6 July 2009.

The City Council actively welcomes members of the public and the press to attend its meetings and holds as many of its meetings as possible in public. Provision is also made on the agendas for public questions to committees and details of how questions can be raised can be found on the website and/or on agendas for the meetings.

The closing date for receipt of public questions and deputations for the next meeting is 12 noon on the fifth working day before the meeting.

Agendas and minutes are published on the council's website www.brighton-hove.gov.uk. Agendas are available to view five working days prior to the meeting date.

Meeting papers can be provided, on request, in large print, in Braille, on audio tape or on disc, or translated into any other language as requested.

For further details and general enquiries about this meeting contact Jane Clarke, (01273 291064, email jane.clarke@brighton-hove.gov.uk) or email democratic.services@brighton-hove.gov.uk

Date of Publication - Wednesday, 17 June 2009

BRIGHTON & HOVE CITY COUNCIL

LICENSING COMMITTEE (LICENSING ACT 2003 FUNCTIONS)

3.30PM 24 APRIL 2009

COUNCIL CHAMBER, BRIGHTON TOWN HALL

MINUTES

Present: Councillors C Theobald (Chairman), Lepper (Deputy Chairman), Allen, Mrs Cobb, Fryer, Hamilton, Harmer-Strange, Hyde, Janio, Kitcat, Older, Pidgeon, Simson, Watkins and West

Apologies: Councillors Marsh and Young

PART ONE

37. PROCEDURAL BUSINESS

37A Declaration of Substitutes

37.1 Councillor Janio declared he was substituting for Councillor Young.

37.2 Councillor Allen declared he was substituting for Councillor Marsh.

37B Declarations of Interest

37.3 There were none.

37C Exclusion of the Press and Public

37.4 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).

37.5 **RESOLVED** – That the press and public be not excluded.

38. MINUTES OF THE PREVIOUS MEETING

- 38.1 **RESOLVED** – That the minutes of the previous meeting held on 5 February 2009 be approved and signed by the Chairman as a correct record.

39. CHAIRMAN'S COMMUNICATIONS

- 39.1 There were none.

40. PUBLIC QUESTIONS

- 40.1 There were none.

41. CUMULATIVE IMPACT AREA ASSESSMENT

- 41.1 The Committee considered a report of the Assistant Director of Public Safety regarding the Cumulative Impact Area (CIA) Assessment (for a copy see minute book).
- 41.2 The Head of Environmental Health and Licensing summarised the report and stated that the Cumulative Impact policy had been in effect for just over one year and been imposed to help reduce violent crime and public nuisance within the city centre. Both Sussex Police and the Environmental Health and Licensing Team were satisfied that the policy was contributing to the improving picture of violent crime within the city.

It was noted that Residents' Associations living close to the perimeter had requested that the area be extended, but there was currently no evidence to justify this and the Head of Environmental Health and Licensing stated that licensing laws should not be the primary mechanism for controlling crime and disorder. The main purpose of the policy was to allow Members discretion to refuse an application if they felt it was necessary, but it was noted that such policies should not be absolute in their application, and that they should be based on evidence. Due to this, it was required to review the policy regularly and the Head of Environmental Health and Licensing explained that if any part of the policy was to change, a consultation exercise would need to take place on the new proposals. The Head of Environmental Health and Licensing requested that Chief Inspector Mills from Sussex Police be allowed to address the Committee regarding this issue.

- 41.3 Chief Inspector Mills stated that there had been two requests for an extension to the area: in London Road and in the North Laine area. He confirmed that there would need to be an evidential basis for any extensions and they would need to be proportionate, legal and necessary to the area. Chief Inspector Mills stated that Sussex Police were wholeheartedly behind the policy, and felt that the policy had assisted the Police in managing a much safer city.
- 41.4 The Environmental Health Manager, Annie Sparks, stated that the city had seen a 35% drop in noise complaints relating to licensed premises between 2008-09, and felt that the current mechanisms for managing complaints and the option to hold a review hearing were excellent.

- 41.5 Councillor Watkins stated he supported the Cumulative Impact Area, but asked for the boundary of the area to take in the whole of the Brunswick and Adelaide ward, as it currently only covered half of it.
- 41.6 Councillor Simson stated that she would be concerned if the area were pushed out incrementally and asked if there was any evidence to support the extensions. The Head of Environmental Health and Licensing stated that it was natural for residents who lived just outside the boundary to request inclusion in the CIA, but the policy had to be evidence based to be justifiable. He noted that there were other options available for the control of problem premises, including the powers of review, which were open to all communities in the Brighton and Hove area. If the policy was to be changed, or the area moved in any way, it would be subject to a new consultation exercise and the approval of Full Council again.
- 41.7 Councillor Kitcat asked if the CIA applied to off-licensed premises. The Head of Environmental Health and Licensing stated that the policy was based around evidence obtained regarding on-licensed premises, and the government had stated it was not justified to include off-licensed premises in this evidence base. Once initiated, the policy had the affect of including all licensed premises within the area however.
- 41.8 Councillor Janio asked Chief Inspector Mills if Sussex Police would like to see the CIA extended. Chief Inspector Mills stated that the Police were satisfied with the current area, which they felt they had evidence to justify.
- 41.9 Councillor Janio asked if off-licensed premises needed to be included in the policy and the Head of Environmental Health and Licensing replied that the Committee could have taken a different view at the time of approving the policy. Legal challenges to the policy had to be made within the first three months to be valid, however the current policy gave favourable consideration to small restaurants and theatres, as demonstrated by developments in Black Lion Street.
- 41.10 Councillor Fryer asked what level of incidents would need to occur before Officers considered there was enough evidence to extend the area. The Head of Environmental Health and Licensing stated that there was not a recognised threshold at which an area would automatically be considered for inclusion, but the purpose of the review was to ensure that the policy was adequate, reasonable and justifiable. It was felt that the current policy met these conditions.
- 41.11 Councillor Fryer felt that although there had been a drop overall in noise complaints across the city, there had been a rise in certain areas. She stated that evidence for the CIA could also include noise complaints, and on this basis there were areas that should be included in the policy. The Environmental Health Manager agreed that noise complaints directly relating to licensed premises could be included in the evidential basis for agreeing the area, but general noise in the streets would not qualify for this. She noted that the complaints position would be reviewed regularly.
- 41.12 Councillor West felt that the CIA was a positive development but felt that there was a lack of rigour and detail in the report presented to Committee. He felt that the London Road hotspot differed only slightly in terms of crime rates compared with the CIA, but there were no reasons given as to why this was not being considered for inclusion in the

area. He felt that the issue of noise complaints had not been dealt with effectively and no comparative data was offered regarding other CIA policies across the country. He requested that at the next review, a more detailed and comprehensive report be submitted to the Committee and take into consideration areas where the policy might be expanded.

- 41.13 Chief Inspector Mills replied that the statistical volume of premises was not the main driver for including an area in the CIA. The policy was based around the negative impact premises were having in an area, and on the London Road area in particular, the majority of the negative impact was being created by drug dealers, and street drinkers who were buying alcohol from various places across the city. Chief Inspector Mills stated that there were other, more effective ways of dealing with problems such as these, and noted that a survey of residents had been conducted in 2008 regarding licensing issues in the area and only 28 responses had been received. This indicated that there was not a strong feeling among residents that licensed premises were causing a problem in this area.
- 41.14 The Head of Environmental Health and Licensing stated that he had attended recent London Road Local Action Team and Traders Association meetings and felt there was a strong feeling about licensed premises in the area. However, there had been only one new application in this area in the past year, and it was likely that there had in fact been a net reduction in premises, and so it would be difficult to justify a cumulative impact policy for this area. He also noted that licensing policy was not the primary way to deal with crime and disorder in an area. He stated that better geographical information would become available over time to demonstrate trends across the city to help assess the policy, but a way forward for better information sharing and gathering could be to include representatives of Residents' Associations in the Licensing Strategy Group.
- 41.15 Councillor Hyde stated that any expansion to the policy would need to meet robust criteria. She also felt that there was no need to include comparative data in future reports as Brighton & Hove were leading the way in this issue, and it not be relevant to the circumstances.
- 41.16 Councillor Simson proposed an amendment to the recommendation of the report to include the word 'regularly' and this was agreed by Members.
- 41.17 **RESOLVED** – That the Committee has considered and agrees with the recommendations as follows:
1. To continue to adopt the Cumulative Impact Area (as defined in appendix 1 of the report [for a copy see minute book]) and to continue to adopt the Special Policy (as defined in appendix 2 [for a copy see minute book]) in relation to that Cumulative Impact Area.
 2. To review *regularly* the need for a Cumulative Impact Area or Areas and Special Policy within Brighton & Hove.
 3. To recommend that the Council continues to include the Special Policy and associated defined Cumulative Impact Area as part of its current Licensing Act 2003: Statement of Licensing Policy.

42. HEALTH IMPACT ASSESSMENT OF LICENSING

- 42.1 The Committee considered a report from the Director of Environment regarding the Health Impact Assessment of Licensing (for copy see minute book).
- 42.2 The Head of Environmental Health and Licensing stated that he had hoped to bring a full report to the meeting, but the consultant appointed to conduct the work had unfortunately been taken ill. Therefore an interim report had been submitted to update Members on the situation.
- 42.3 Councillor Fryer asked for the results of the final report to be included in the scrutiny review of alcohol and younger people and the Head of Environmental Health and Licensing stated that they had received an interim report and would be included in the final report. He noted that a number of different scrutiny bodies were interested in this issue, but were approaching it from different perspectives.
- 42.4 Councillor Fryer asked for the views of the scrutiny review to be taken into account when drafting the final report and the Head of Environmental Health and Licensing stated that the report would be submitted to the Licensing Committee for approval, but would include ideas from other areas of the Council where appropriate.
- 42.5 **RESOLVED** – That the Committee notes the interim report on the Health Impact Assessment of Licensing.

43. SCHEDULE OF LICENSING REVIEWS

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

44. SCHEDULE OF LICENSING APPEALS

- 44.1 **RESOLVED** – That the Committee notes the Schedule of Licensing Appeals.

45. GAMBLING ACT SCHEDULE

- 45.1 **RESOLVED** – That the Committee notes the Gambling Act Schedule.

46. ITEMS TO GO FORWARD TO COUNCIL

- 46.1 There were none.

The meeting concluded at 5.40pm

Signed

Chairman

Dated this

day of

WRITTEN QUESTIONS FROM MEMBERS OF THE PUBLIC

A period of not more than fifteen minutes shall be allowed at each ordinary meeting for questions submitted by a member of the public who either lives or works in the area of the authority.

The question will be answered without discussion. The person who asked the question may ask one relevant supplementary question, which shall be put and answered without discussion. The person to whom a question, or supplementary question, has been put may decline to answer it.

The following written question has been received from a member of the public:

(i) Mr R Pennington

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?

LICENSING COMMITTEE

(LICENSING ACT 2003 FUNCTIONS)

Agenda Item 6

Brighton & Hove City Council

Subject: *Licensing Enforcement Policy*
Date of Meeting: **25 June 2009**
Report of: *Director of Environment*
Contact Officer: Name: **Tim Nichols** Tel: **29-2163**
E-mail: tim.nichols@brighton-hove.gov.uk
Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 On 5th February 2009, the committee approved a draft Licensing Enforcement Policy for consultation.
- 1.2 On 27th November 2008, the committee approved Home Office and Department of Culture, Media and Sport document entitled "Problem Premises on Probation". This government advice proposed tough conditions to be assembled in packages for premises causing difficulties in communities.

2. RECOMMENDATIONS:

- 2.1 That the committee adopts the licensing enforcement policy appended in appendix A.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The licensing enforcement policy is consistent with the corporate enforcement policy and principals of good regulation: proportionality, accountability, consistency, transparency and targeting.
- 3.2 Other government advice such as the Regulators Compliance Code, Cabinet Office Enforcement Concordat, the Hampton Review and the Macrory report all inform this report.

4. CONSULTATION:

- 4.1 The draft policy has been considered by the Licensing Strategy Group, including Sussex Police, East Fire and Rescue Service, the licensed trade, businesses associations, residents and their associations, council enforcement officers such as trading standards and environmental health. It has also been considered by

the taxi trade by way of its consultative forum. Brighton & Hove Business Forum and the public at large via the website have also been consulted.

- 4.2 The council's legal officers have made some improvements to ensure clarity and these are incorporated in the report appended.
- 4.3 The Community Safety Partnership commented as follows: There is a need to ensure safeguarding children provisions are properly recognised, for instance, supervision of children by adults in licensed premises and exposure of children to drunken or violent behaviour. It is felt that this is covered by offences created in the act and accommodated by the proposed enforcement policy. Concern was raised about employment of young adults in the licensed trade, however, it would be unlawful to exclude a type of employment to students etc.
- 4.4 One local licensed business responded. The correspondent considered the policy appropriate and encouraging within the context of the current economic climate although some of the sanctions were considered draconian. The correspondent supported the principals of good regulation and recognised that even aiming for a consistent approach, interpretation of guidelines can result in differing outcomes. There was no complaint about the fairness of the council's licensing officers although in some time past, it was felt some over-zealousness may have been experienced. The importance of adhering to the Hampton Principals of better regulation was supported. The severity of the Home Office's proposed package of measures to punish offenders was questioned as some pubs have a particularly challenging time after change of ownership if they have inherited a poor reputation. However, it is felt that by dealing with applications on their individual merit, this fear can be ameliorated.
- 4.5 The St. James' Street Area Action Group made a submission (appended). Responsible authorities share intelligence in order to target those licensed premises causing problems, for instance, test purchases for age-restricted sales, and where there are complaints about sale of alcohol to inebriated people. The cumulative impact area covers this group's area.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

The Licensing Act 2003 provides for fees to be payable to the licensing authority in respect of the discharge of their functions. The fee levels are set centrally at a level to allow licensing authorities to fully recover the costs of administration, inspection and enforcement of the regime.

Finance Officer Consulted: Karen Brookshaw Date: 18/05/09

5.2 Legal Implications:

Policy will assist the Council in meeting its duty under section 6 of the Human Rights Act 1988 not to act in a way which is incompatible with a Convention Right.

Lawyer Consulted: Rebecca Sidell

Date: 01/06/09

5.3 Equalities Implications:

An equality impact assessment concludes a policy should promote action that is transparent, consistent, proportionate and fair.

5.4 Sustainability Implications:

None.

5.5 Crime & Disorder Implications:

The policy requires officers to consider targeted and proportionate action against those that persistently breach the legislation so should assist in the prevention of crime and disorder.

5.6 Risk and Opportunity Management Implications:

None.

5.7 Corporate / Citywide Implications:

Good regulation promotes economic success and prosperity.

SUPPORTING DOCUMENTATION

Appendices:

- A. Licensing enforcement policy.
- B. Lead agency status.
- C. St. James' Street Area Action Group submission.

Documents In Members' Rooms:

- 1. None.

Background Documents:

- 1. The Regulators Compliance Code.
- 2. Cabinet Office Enforcement Concordat.
- 3. Hampton Review.
- 4. Macrory Report (Penalties & Sanctions).

LICENSING ENFORCEMENT POLICY

1.0 STATEMENT OF OBJECTIVES

- 1.1 The Environmental Health & Licensing service is committed to the Council's core priorities. This policy gives detail on how the Council's priorities:

Protect the environment while growing the economy;
better use of public money;
reduce inequality by increasing opportunity;
fair enforcement of the law;
open and effective leadership.

and will inform the enforcement actions taken. Amendments to prioritise will be embedded automatically.

- 1.2 This service policy promotes efficient and effective approaches to regulatory inspection and enforcement that improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code.
- 1.3 In certain instances the service may conclude that a provision in the Code is either not relevant or is outweighed by another provision. It will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.
- 1.4 The service pursues a positive and proactive approach towards ensuring compliance by:
- Supporting the better regulation agenda;
 - Helping make prosperity and protection a reality for the City's community;
 - Helping and encouraging regulated entities to understand and meet regulatory requirements more easily;
 - Responding proportionately to regulatory breaches; and
 - Protecting and improving public health and the environment.

- 1.5 This policy is based on the seven 'Hampton Principles' of:

Economic Progress: Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection;

Risk Assessment: Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most;

Advice and Guidance: Regulators should provide authoritative, accessible advice easily and cheaply;

Inspections and other visits: No inspection should take place without a reason;

Information requirements: Businesses should not have to give unnecessary information or give the same information twice;

Compliance and enforcement actions: The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions; and

Accountability: Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

- 1.6 The rights and freedoms given under the Human Rights Act, particularly Article 6 and 8, will be observed, as will the provisions of the Regulation of Investigatory Powers Act.

2.0 SCOPE OF THE POLICY

- 2.1 This policy supports and supplements specific guidance on enforcement action contained in the Statutory Code of Practice for Regulators, Brighton & Hove City Council's Corporate Enforcement Policy, Statutory Codes of Practice and relevant guidance documents and guidelines issued by Government Departments and co-ordinating bodies.
- 2.2 This policy relates to actions taken to educate and enforce legislation where non-compliances have been identified or have a realistic potential to occur.
- 2.3 The policy is limited to those enforcement activities lead by the Head of Environmental Health & Licensing.

3.0 TRAINING

- 3.1 Officers undertaking enforcement duties will be suitably trained and qualified so as to ensure they are fully competent to undertake their enforcement activities.

4.0 MANAGEMENT SYSTEMS

- 4.1 The service will maintain management systems to monitor the quality and nature of enforcement activities undertaken, so as to ensure, so far as is reasonably practicable, uniformity and consistency.

5.0 ENFORCEMENT OPTIONS

- 5.1 The service recognises the importance of achieving and maintaining consistency in its approach to enforcement. Statutory Codes of Practice and guidance issued by Government Departments, other relevant enforcement agencies or professional bodies will therefore be considered and followed where appropriate.

- 5.2 Sanctions and penalties will be consistent, balanced, fairly implemented and relate to common standards that ensure individual's, public safety or the environment is adequately protected. The aim of sanctions and penalties are to:

- Change the behaviour of the offender;
- Eliminate any financial gain or benefit from non-compliance;
- Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- Proportionate to the nature of the offence and the harm caused; and
- Aim to deter future non-compliance.

- 5.3 Criteria to be taken into account when considering the most appropriate enforcement option include:

- the potential of the offence to cause harm;
- confidence in the offender;
- consequences of non compliance;
- likely effectiveness of the various enforcement options.

5.4 Having considered all the relevant options the choices for action are:

- **Informal Warning:** All advice issued will be given in writing and specify the nature of the breach or offence, and the actions required to remedy the issue. An informal warning may be included with the advice, and may accompany higher-level actions, such as Enforcement Notices or Voluntary Surrender:
- **Licence review:** Licence review power will be used where an application for review relates to one or more of the licensing objectives.
- **Taxi licence:** Taxi licence suspension or revocation will be used to protect public safety. Other sanctions such as DSA testing will be used to protect public safety and in accordance with the taxi licensing policy (Blue book).
- **Simple Caution:** The issue of a Simple Caution by an authorised officer may be undertaken as an alternative to prosecution where it is considered unnecessary to involve the courts, and the offender's response to the problem makes repeat offending unlikely, or the offender's age or health make it appropriate. Cautions may only be issued where the offender makes a clear and reliable admission of guilt and understands the significance of acceptance.
- **Prosecution:** A prosecution is appropriate where there is a breach of a legal requirement, such that public safety, health, economic or physical well-being or the environment or environmental amenity is adversely affected.

The Crown Prosecutor's Code of Evidential and Public Interests tests must be met in all cases. However, certain circumstances will normally justify prosecution to prevent the undermining of the service's enforcement responsibilities.

- Failure to comply with an Enforcement Notice
 - Declining a Simple Caution
 - Continued, reckless, negligent or pre-meditated non-compliance.
 - Failure to pay a fixed penalty.
 - Non-cooperation, acts of obstruction or threats of physical harm or abuse.
- **Injunctions:** Injunctive action as a means of preventing an activity or course of action likely to result in significant risk to public or community safety or economic wellbeing of consumers and businesses.

5.5 If the Department is considering taking enforcement action which it believes may be inconsistent with that adopted by other authorities, the matter will be referred to the appropriate local co-ordinating body.

6.0 INFORMAL WARNING

6.1 Informal action may be taken when:-

- the act or omission is not serious enough to warrant formal action or
- from the individual's/enterprise's past history it can be reasonably expected that informal action will achieve compliance or
- confidence in the individual/enterprise's management or ability to resolve the matter is high or
- the consequences of non-compliance will not pose a significant risk to public health, public safety, animal welfare or the environment.

6.2 When an informal approach is used to secure compliance with regulations, written documentation issued will:-

- contain all the information necessary to understand what is required and why;
- indicate the regulations contravened, measures which will enable compliance with legal requirements and that other means of achieving the same effect may be chosen;
- clearly differentiate between legal requirements and recommendations of good practice. Such a differentiation will also be made when verbal advice is given.

7.0 SIMPLE CAUTIONS

7.1 A Simple Caution may be issued as an alternative to a prosecution. Cautions may be issued to:-

- deal quickly and simply with less serious offences;
- divert less serious offences away from the courts;
- reduce the chances of repeat offences.

7.2 The following factors will be considered when deciding whether a Caution is appropriate:-

- evidence of the suspect's guilt
- has a clear and reliable admission of the offence been made either verbally or in writing
- is it in the public interest to use a Caution as the appropriate means of disposal when taking into account the public interest principles set out in the Code for Crown Prosecutors.

- the suspected offender must understand the significance of a simple caution and give an informed consent to being cautioned.

7.3 No pressure will be applied to a person to accept a Simple Caution.

7.4 The 'cautioning officer' will be the most appropriate officer from Service Director, Service Assistant Director, Head of Service Environmental Health Manager or Licensing Manager. The Cautioning Officer must not have taken an active part in investigating the case.

7.5 Should a person decline the offer of a simple caution a prosecution will be recommended.

8.0 PROSECUTION

8.1 The Department recognises that the decision to prosecute is significant and could have far reaching consequences on the offender.

8.2 The decision to undertake a prosecution will be taken after proper consultation in accordance with the Scheme of Delegation for the Council's functions. The decision to proceed with a prosecution will normally be taken following legal advice. The matters to be taken into account when deciding if the issue of proceedings is proportionate include:-

- the seriousness and nature of the alleged offence;
- the role of the suspect in the commission of the offence;
- any explanation by the suspect or any agent or third party acting on their behalf;
- was the suspect in a position of trust, responsibility or authority in relation to the commission of the offence;
- is there evidence of premeditation or disregard of a legal requirement for financial reward;
- risk of harm to the public, an individual or the environment;
- relevant previous history of compliance;
- reliability of evidence and witnesses
- any mitigating or aggravating circumstances or the likelihood that the suspect will be able to establish a defence;
- suspect's willingness to prevent a recurrence of the offence;
- the need to influence future behaviour of the suspect;
- the likely penalty to be imposed; and
- a prosecution is in the public interest, there is realistic prospect of conviction and sufficient evidence to support proceedings.

8.3 All relevant evidence and information will be considered before deciding whether to instigate proceedings in order to enable a consistent, fair and objective decision to be made.

8.4 Where an act or omission is capable of constituting both a summary and either way offence, when deciding which offence to charge the following will be considered:-

- the gravity of the offence;
- the adequacy or otherwise of the powers of the summary court to punish the offence;
- the record of the suspect;
- the suspect's previous response to advice or other enforcement action;
- the magnitude of the hazard;
- any circumstances causing particularly great public alarm;
- comments from the Council's Solicitor's Office.

8.5 As a general rule an individual or business will be given a reasonable opportunity to comply with the law although in some circumstances prosecution may be undertaken without giving prior warning e.g.

- the contravention is a particularly serious one;
- the integrity of the licensing framework is threatened.

9.0 Home Office and Government Advice: Problem premises on probation

9.1 The licensing authority supports the strategies of interventions and tough conditions to be assembled into packages released on 2008. The current version is appended (appendix A).

10. APPEALS

If any person is unhappy with the action taken, or information or advice given they will be given the opportunity of discussing the matter with the relevant team manager, Head of Service or Assistant Director.

Any such appeal does not preclude any aggrieved person from making a formal complaint about the service or any officers. Any such complaint will be dealt with in accordance with Corporate procedures and guidance.

Complaints that are not dealt with by the council's complaints procedure are listed in corporate policy and include:

- Complaints where the complainant or another person has commenced or intends to commence legal proceedings against the council.
- Complaints where the council has commenced or intends to commence legal proceedings against the complainant or another person relating to the matter of complaint.

11. **SHARED ENFORCEMENT ROLES**

Lead agency status between Sussex Police, East Sussex Fire and Rescue Service and the council's trading standards, environmental health and licensing officers are determined between the agencies at county level. The current position is appended (appendix B).

“PROBLEM PREMISES ON PROBATION” – RED AND YELLOW CARDS: HOW IT WOULD WORK

The problem

1. In many cases, revocation of a premises licence effectively kills any business which is focussed on retailing alcohol. This means that not only the business owner suffers, but most people working there will lose their livelihoods. Many of these workers will be entirely innocent of any wrong-doing. There is also an impact on those who rely indirectly on income from the premises – such as local food suppliers or cleaning contractors, and the closure of a premises can deprive some communities of their local shop or restrict local consumer choice. Enforcement agencies that apply for reviews and local councillors sitting on licensing committees are well aware of this potential impact and it can lead to a reluctance to use the powers in the Act to revoke the licence instantly for any failure to promote the licensing objectives. This risks patchy enforcement and uneven solutions to alcohol-related problems around the country.
2. In addition, in many cases, enforcement agencies will prefer to negotiate additional voluntary conditions with problem premises against the threat of review as an immediate, pragmatic and less bureaucratic solution. While this may be a reasonable approach in many cases, there is a risk that some premises are not being dealt with as firmly as necessary, particularly given the level of test purchase failures. Nor are voluntary agreements particularly visible, lessening the deterrent effect on other premises.
3. Government wishes to support the enforcement agencies and licensing authorities by providing clear guidance on a “yellow card / red card” system, which would ensure a firm response to problems, but which give premises an opportunity to reform. The intention is that such a system would be highly visible and send a clear message to alcohol retailers, and the public, that action will be taken against those who act contrary to the licensing objectives and the law.

4. The proposed interventions below would not prevent the giving of an instant red card in an appropriately serious case. It should be realised that a “test purchase” failure often masks multiple offences that have gone undetected.

Supporting enforcement agencies

5. The Government will encourage enforcement agencies – mainly the police, trading standards officers and environmental health officers – to seek more reviews in the knowledge of the yellow card/red card system described below. This will mean not giving formal warnings. It will mean that on identifying problem premises, the licensing authority will be engaged faster than it might have been in the past.
6. Enforcement agencies would be encouraged to seek reviews when local intelligence suggests that individual premises are selling to children or causing other crime problems or causing noise nuisance.
7. Under the law, the licensing authority must then hold a hearing so long as the application relates to one of the four licensing objectives and is made by a responsible authority or by an interested party like a local resident or another local business.

First intervention

8. Responsible authorities will be encouraged to propose a package of touch new conditions to be added to the existing conditions which are designed to combat the identified problem. The kinds of conditions that we have in mind are set out in Annex A. These would not be appropriate for every premises and need to be tailored to the nature of the problem and the type of premises. Such action should be supplemented where appropriate by:
 - a. Removal of the designated premises supervisor and his/her replacement (the manager is removed);
 - b. Suspension of the licence for between 1 day and 3 months according to the circumstances.
 - c. Restriction on trading hours – cutting hours of trading in alcohol.

- d. Clear warning that a further appearance will give rise to a presumption of revocation.
9. If appropriate following review, the licensing authority should consider these packages of conditions and actions to challenge problem premises more aggressively.
 10. For example, requiring a major supermarket to make all alcohol sales through a single till manned by a person aged 25 years or older in order to tackle sales to underage. Over a year, this would potentially cost such a supermarket £millions. It would also make them reflect on their levels of supervision at other stores.
 11. In addition, enforcement agencies should make the premises in question a priority for test purchases and more regular inspections.
 12. The aim would be to put the premises on probation. Effectively, they are given a yellow card. They are put on notice that the next offence or breach would mean an automatic second intervention – a red card.

Second intervention

13. In the absence of improvement, enforcement agencies should seek another review. The licensing authority again must grant a hearing.
14. If satisfied on the issue of the lack of improvement, the licensing authority should look to **revoke the licence**. The action should be publicised in the area as an example to other retailers.

Implementation

15. Requires:
 - Development with the Home Office of a toolkit and guidance for police, trading standards and ethos;
 - Initial letters to Leaders of local authorities and Chief Executives;
 - Ultimately, stronger statutory Guidance to be laid in Parliament for licensing authorities themselves.

16. Central Government cannot tell licensing authorities what to do. The review powers are devolved to them. Similarly, central Government cannot direct enforcement agencies how to enforce the law. It would remain their judgement when and how to act.

ANNEX A: POSSIBLE TOUGH CONDITIONS TO BE ASSEMBLED INTO PACKAGES

n.b. These would not be appropriate for every premises and need to be tailored to the nature of the problem and the type of premises.

GREATER CONTROL OVER SALE

1. Designated checkout(s) for alcohol sales (supermarket). Impact on protection of children from harm, but also impact on sales and goodwill (probable loss of trade to competitors).
2. Personal licence holder/DPS to be on site at all times during sales of alcohol. Impact on protection of children from harm and new costs if additional staff have to qualify as personal licence holder.
3. Personal licence holder/DPS to supervise and authorise every individual sale of alcohol. Impact on protection of children from harm and new costs if additional staff have to qualify as personal licence holder.
4. SIA registered security staff to be present at points of sales to support staff refusing sales to u-18s and drunks.
5. Alcohol sales only to be made only by person aged not less than 25 years. Impact on protection of children from harm, but also impact on sales and goodwill (probable loss of trade to competitors).
6. CCTV installed at all points of sale and recorded. Recordings can be examined by a constable or trading standards officer to determine sales to minors or drunks.

TRAINING

7. All staff to read and sign a declaration that they understand the law every time they start a shift.
8. Train all staff engaged in selling alcohol in alcohol awareness (not just personal licence holders). All new staff to be trained within two weeks of commencing employment. Evidence of training to be retained in writing and to be available for inspection by any authorised person and training standards officers. Impact on all licensing objectives.

ALCOHOL SALE BANNED AT CERTAIN HOURS

9. No alcohol sales Mon – Fri between 4pm and 8.30pm. Impact on protection of children from harm or targeted hours reflecting times when local intelligence indicates under 18s may be purchasing alcohol.
10. No alcohol sales – Friday to Sunday. Impact on all four licensing objectives.

ALCOHOL DISPLAYS

11. No displays of alcohol or advertising of alcohol promotions that can be seen from outside the premises.
12. No alcohol stocks promoted alongside goods likely to appeal to children (e.g. confectionary, toys).

CUTTING DOWN ON SHOPLIFTING

13. SIA registered security staff to be present at alcohol aisles during opening times to prevent attempted under age sales or theft.
14. Location of alcohol stocks/displays not to be sited near the entrance/exit to deter shoplifting.
15. No direct public access to alcohol products – like tobacco, alcohol to be kept behind a dedicated kiosk.

NAMING AND SHAMING

16. Display an external sign/yellow card to state which of the licensing act objectives they have breached and what action has been taken against them.

OTHERS

17. Maintain a log of all under attempted purchases from those who appear to be under 18 or drunk.

18. Children aged under [18 years] not to be present or (not more than one child at any one time) on premises (other than children living on the premises or of the people working on the premises); or only children under 18 accompanied by an adult to be permitted on the premises during retailing hours. Impact on protection of children from harm.
19. Products to be labelled (a label stuck to the bottle or can) to show the details of the shop from which it was bought. Purpose would be to provide evidence of unlawful sales if product found commonly in possession of persons under 18.
20. Designated single items – beer, alcopops and cider – not to be sold to any person. Impact on protection of children from harm. Purpose would be to reduce sales to children and drunks. Alternative would be to prescribe sales of beer, alcopops and cider in quantities of less than four.
21. CCTV installed, monitored and 24 hour recordings kept for a week and made available to constables and persons authorised under the 2003 Act to help identify attempted proxy purchasing.

Appendix B

LEAD AGENCY STATUS

Offence / Issue	Police	Local / Licensing Auth	Fire & Rescue	Trading Standards
<u>Licensing Objective 1:</u> Crime and Disorder				
Offences of failing to notify changes in details <i>Section 33(6) Licensing Act 2003</i>		Lead		
Offences of failing to display licences or certificates <i>Section 57(4) Licensing Act 2003</i>		Lead		
Unauthorised use of premises for licensed activities <i>Section 136 Licensing Act 2003</i>		Lead		
Exposing alcohol for unauthorised sale <i>Section 137 Licensing Act 2003</i>	Shared Lead	Shared Lead		
Keeping alcohol on premises for unauthorised sale <i>Section 138 Licensing Act 2003</i>	Shared Lead	Shared Lead		
Allowing Disorderly Conduct on Licensed Premises <i>Section 140 Licensing Act 2003</i>	Lead			
Obtaining/supplying alcohol to drunk <i>Sections 141 / 142 Licensing Act 2003</i>	Lead			
Drunkenness in Premises <i>Section 143 Licensing Act 2003</i>	Lead			

Offence / Issue	Police	Local / Licensing Auth	Fire & Rescue	Trading Standards
Keeping of smuggled goods <i>Section 144 Licensing Act 2003</i>	HMC&E	HMC&E		
False statements made for purposes of the Act <i>Section 158 Licensing Act 2003</i>		Lead		
Enforcement of closure order <i>Section 169 Licensing Act 2003</i>	Lead			
Prohibition of alcohol sales at service / garage areas <i>Section 176 Licensing Act 2003</i>	Shared Lead	Shared Lead		
Public Drunkenness <i>Section 12 Licensing Act 1872</i>	Lead			
Underage drinking <i>Section 169 Licensing Act 1964</i>	Shared Lead			Shared Lead
Misuse of Drugs <i>Section 4 Misuse of Drugs Act 1971</i>	Lead			
Anti Social Behaviour <i>Section 1 Crime & Disorder Act 1998 (ASBO)</i>	Shared Lead	Shared Lead		
Acceptance of accredited proof of age cards		Lead		
Provision of effective CCTV in and around premises		Lead		
Employment of SIA licensed door staff	Shared Lead	Shared Lead		
Requirements to provide toughened or plastic glasses		Lead		
Provision of secure deposit boxes for confiscated items (sin bins)	Shared Lead	Shared Lead		
Provision of litterbins, other security measures such as lighting		Lead		

<u>Licensing Objective 2:</u> Public Safety:	Police	Local / Licensing Auth	Fire & Rescue	Trading Standards
Sales of alcohol on vehicles <i>Section 156 Licensing Act 2003</i>	Lead			
Overcrowding of premises		Shared Lead	Shared Lead	
Use of special effects such as lasers, pyrotechnics, smoke machines and foam		Shared Lead	Shared Lead	
Blocked or locked means of escape		Shared Lead	Shared Lead	
Provision of sufficient number of people employed to secure safety of patrons		Lead		
Regular testing and certification of systems and appliances		Shared Lead	Shared Lead	
Offence / Issue	Police	Local / Licensing Auth	Fire & Rescue	Trading Standards
<u>Licensing Objective 3:</u> Public Nuisance:				
Public nuisance from noise		Lead		
Public nuisance from litter		Lead		
Public nuisance from persons leaving the premises	Shared Lead	Shared Lead		
Public nuisance from odour		Lead		
Effective public transport		Lead		
Adequate public lighting/security lighting		Lead		

<u>Licensing Objective 4:</u> Protection of Children from harm:	Police	Local / Licensing Auth	Fire & Rescue	Trading Standards
Exposure to explicit films/plays <i>Sections 74 & 76 Licensing Act 2003</i>		Lead		
Requirements for children to be accompanied by an adult <i>Section 145 Licensing Act 2003</i>		Lead		
Sale of Alcohol to Children <i>Section 146 Licensing Act 2003</i>				Lead
Sale of liqueur confectionery to children under 16 years <i>Section 148 Licensing Act 2003</i>	Lead			
Purchase, acquisition or consumption of alcohol by or for children <i>Sections 149 & 150 Licensing Act 2003</i>	Lead			
Delivering to or sending a child to obtain alcohol <i>Sections 151 & 152 Licensing Act 2003</i>	Lead			
Unsupervised sales by children <i>Section 153 Licensing Act 2003</i>	Lead			
Confiscation of sealed containers of alcohol and unsealed <i>Confiscation of Alcohol (Young Persons) Act 1997)</i>	Lead			
Provision of sufficient number of staff to secure protection of children from harm <i>Section 12(1) Children and Young Persons Act 1933</i>		Lead		

Offence / Issue	Police	Local / Licensing Auth	Fire & Rescue	Trading Standards
Concerns of moral/psychological harm		Lead		
Concerns over physical harm	Shared Lead	Shared Lead		
Exposure to drugs, dealing or taking	Lead			
Exposure to gambling	Shared Lead	Shared Lead		
Exposure to activities of adult/sexual nature	Shared Lead	Shared Lead		
Exposure to incidents of violence/disorder	Lead			
Exposure to environmental pollution such as noise or smoke		Lead (with HSE)		
Exposure to special hazards i.e. suitability of the premises		Lead		
Limitation on hours when children may be present on all or parts of premises	Shared Lead	Shared Lead		
Exclusions by age when certain activities are taking place		Lead		

St James's Street Area Action Group

To Licensing Strategy Group B&HCC
From Trevor N Scoble Authorised Agent for SJSAAAG Dated 29.05.09

LICENSING ENFORCEMENT POLICY

STATEMENT OF OBJECTIVES

Under statement of objectives we would like the Council to include for the residents and local businesses the following;

Protection of residents and local business against the environmental impact of Licensed Premises on their Lives & businesses (24 hours 365/6 day a year)

Under Section 17 of the Crime & Disorder Act 1998
Human Rights Act 1998
UK & European Environmental Law

Reasons in support

It is just not the perception but now a matter of fact that many local residents and business people no longer feel safe to walk our local shopping street and residential side streets, day and night and to go about their any normal activities particular around the Pubs, Bars, Night Clubs when returning home from visiting friends & relations Shops, Theatres, Cinemas, Restaurants or any other normal life activities.

Business feel at risk when delivering goods and opening up first thing in the morning and through out the day because of the high number of drunks and street drinkers coming into their premises.

It is now a major problem of the environmental impact on the lives and homes of local residents of the many Licensed Premises not just during the Day but throughout each and every night of the year insofar as to the high levels of noise and disturbance, foul language and the resultant urine, vomit, defecation, chewing gum, broken glass and fag ends left on our front door steps and residential side streets.

Under item 1.5 Risk Assessment

We would ask B&HCC to carry out a Risk Assessment in our area as it is has the highest residential density in the City but out numbered by the resultant occupancy of Licensed Premises and facilities

We would also like proactive Policing of the Off sales of Alcohol reviewing of premises cctv and street cctv to pursue both offenders shop keepers and street drinkers. Protection of Children should be looked at as they are with drinking Guardians in our Local Parks.

Signed. Trevor N. Scoble for & on behalf of SJSAAAG.

LICENSING COMMITTEE

(LICENSING ACT 2003 FUNCTIONS)

Agenda Item 7

Brighton & Hove City Council

Reviews April - June 09

NAME AND ADDRESS OF PREMISES	Date consideration of closure order received from Magistrates or review received	DATE OF HEARING	DETERMINATION
The Winner, 291 Elm Grove	17.02.09 - Police	16.04.09	Modified hours and added conditions
Three 2 Four 3 - 4 Western Rd	06.04.09 - Police	01.06.09	6 weeks suspension plus modified conditions
Mesopotamia 17 York Place St Peter's & North Laine EB	06.04.09 - Police	01.06.09	3 months suspension plus modified conditions
One Step 59A London Road St Peter's & North Laine	11.06.09 Police	TBA	Pending

LICENSING COMMITTEE

(LICENSING ACT 2003 FUNCTIONS)

Agenda Item 8

Brighton & Hove City Council

Schedule of Licensing Appeals (April 2009 – June 2009)

Premises	Appellant	PTR	Hearing	Outcome
Tesco Store Ltd, St. James Street, Brighton	Tesco Store Ltd		27/28.04.09	Appeal allowed licence granted with conditions. Council liable for own legal costs.
The Black Horse, Montague Place, Brighton	Admiral Taverns		04.06.09	Consent Order: 2 month suspension, removal of DPS, training compulsory.

GAMBLING ACT 2005 (to 25.06.09)

<u>Numbers of applications</u>	<u>Betting</u>	<u>Bingo</u>	<u>Representations received</u>	<u>Categories</u>
Total applications received	0	0	0	All
1 withdrawn on 1968 application				Casino
TUNs – none				
OUNs - none				
Premises closed	0			

