

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

3.00PM 17 NOVEMBER 2011

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillors Deane (Chair), Sykes (Deputy Chair), Cobb, Duncan, Gilbey, Hyde, J Kitcat, Lepper, Marsh, Pidgeon, Rufus, Simson, C Theobald and West

Apologies: Councillors Turton

PART ONE

11. PROCEDURAL BUSINESS

11a Declaration of Substitutes

11.1 Councillor J. Kitcat declared that he was substituting for Councillor A. Kitcat.

11b Declarations of Interest

11.2 There were none.

11c Exclusion of the Press and Public

11.3 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Committee 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 100I of the Act).

11.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of the items listed on the agenda.

12. MINUTES OF THE PREVIOUS MEETING

12.1 Councillor Marsh referred to paragraph 1.2 and suggested that some clarification was required to the wording.

12.2 The Committee agreed that the paragraph should be revised and asked that the Democratic Services Officer rewrite the paragraph and amend the minutes accordingly.

- 12.3 **RESOLVED** – That the minutes of the Licensing Committee (Licensing Act 2003 Functions) Meeting held on 23rd June 2011 be agreed and signed as a correct record subject to the amendment to paragraph 1.2 being completed and approved the Chair.

13. CHAIR'S COMMUNICATIONS

- 13.1 The Chair reported that with regard to Alcohol Pricing, in September, as Licensing Chair she wrote, with the Council's Chief Executive and the Director of Public Health, to the Home Secretary and Her Majesty's Treasury. They expressed concerns over some of the negative impacts of binge drinking, pre loading and street drinking, assaults, rowdiness and ill health. Licensing controls do not address the supply of alcohol currently, except the cumulative impact zone. We recommended addressing affordability and accessibility by using VAT to discourage off sales but support the local hospitality sector. Hazardous drinking is a public health issue and licensing authorities are limited in the remedial action they can take.
- 13.2 The Treasury responded to me, explaining that the alcohol tax system is constrained by EU legislation. Apparently the EU's VAT rules do not allow different tax rates for the same product, although member states can apply a reduced rate to restaurants. The Government's proposals to address problem drinking have included:
- a ban to sell alcohol below cost, although this is only duty and VAT;
 - an increased duty on super strength beer; and
 - the public health responsibility deal.
- 13.3 Although I appreciated the thoughtful response, I am still concerned, particularly about rising alcohol related morbidity and mortality. The National Institute for Health & Clinical Excellence recognises that the critical ways of preventing harmful drinking are by raising price, reducing availability and limited marketing.

14. PUBLIC QUESTIONS

- 14.1 The Chair noted that no public questions had been submitted.

15. STATEMENT OF LICENSING POLICY CONSULTATION RESPONSE

- 15.1 The Licensing Manager introduced the report which outlined the findings of a consultation exercise in relation to a review of the Council's Licensing Policy, which included the proposed increase of the Cumulative Impact Area (CIA) and Special Stress Areas (SSA) and the introduction of a 'matrix' approach to licensing decision making. She noted that the review had followed a request from the Council meeting in February and a report to Committee in June. The council's consultation portal had been used and 178 responses had been received along with twelve separate letters. She noted that the majority of respondents were in favour of extending the areas and the matrix approach, although the Brighton and Hove Licensees Association was opposed to it. She also noted that with regard to the matrix approach the reference on page 28 for

night clubs in mixed commercial and residential areas should be listed as a 'No' rather than a yes.

- 15.2 The Lawyer to the committee stated that in relation to Licensing Guidance, the requirement in the Licensing Act 2003, Section 4, was for the authority to have regard to guidance issued by the Secretary of State. This did not mean that it must be followed to the letter and it was permissible to depart from the guidance for good reason, in particular if local circumstances and experience warranted this. Brighton and Hove had a complex local picture and the responses had highlighted this, referring to problems for example of pre-loading, street drinking and proxy purchasing.
- 15.3 Members of the Committee welcomed the report but queried whether in view of the level of responses it was felt that any legal challenge to an extended CIA could be withstood. Members also expressed concern over how the consultation responses and findings were being reported as some aspects were confusing.
- 15.4 The Head of Environmental Health and Licensing stated that any change in the policy had to be approved by the Full Council and national guidance provided that a local authority set its CIA as it wishes as long as there is local evidence to support that. The Council had been advised in December 2010 by its Monitoring Officer that any changes required due consideration and consultation to be undertaken beforehand, hence the decision to refer back to the Committee and to have the consultation exercise. He could not guarantee the outcome of a legal challenge but any changes to the policy would have resulted from a fair process. He noted the concern over how the information was produced following the consultation and would raise this with the officers responsible.
- 15.5 Councillors West, Simson and Lepper noted the comments and stated that they would have found it helpful to have had a better explanation of the findings. They felt that there was some confusion even for individual respondents in responding to the various questions and this meant that there was a degree of misunderstanding in that an extended CIA would not necessarily mean no new licences were approved.
- 15.6 Councillor Simson also felt that the response rate was not sufficient to get a full picture of how residents felt and that legal challenge remained a concern.
- 15.7 Councillor Hyde also expressed concern in relation to low number of responses to the consultation exercise and in particular whether residents in the Marina had been aware of the process.
- 15.8 Councillor C. Theobald stated that she felt the process had been well managed and noted that an extended CIA should reduce the number of applications coming forward and that it was supported by the police. She therefore fully supported the recommendations detailed in the report.
- 15.9 Councillor West noted that there was an overwhelming support for the extension of the CIA, and SSA's and the matrix approach. However he was concerned that the matrix was not well defined and therefore could lead to a lack of consistency.
- 15.10 Councillor J. Kitcat stated that he welcomed the proposed changes to the policy and noted that Brighton and Hove was a unique area and in a unique position and therefore

believed that the policy could be defended should it be subject to legal challenge. He therefore hoped that the committee would support the recommendations.

- 15.11 Councillor Marsh stated that she felt further clarification was required on how the CIA and SSA's would operate and that the council would need the support of its regulatory partners if it was going to be successful. There were other factors such as on/off premises selling cheap alcohol and the changing ownership of premises that needed to be addressed. The greater availability of alcohol and pricing were two factors that had to be taken into account.
- 15.12 Councillor Lepper stated that as a licensing authority Brighton and Hove had a good reputation, and having taken a brave decision to introduce the CIA, it gained support of all involved. However, she had some misgivings in regard to the proposed extension and felt that further consideration was needed before a recommendation was made to council.
- 15.13 Councillor West stated that he had had similar misgivings but felt that these had been addressed and therefore supported the recommendations.
- 15.14 Councillor Cobb stated that there was a concern about residents' expectations and how these could be addressed, and she was also concerned about the impact an increased CIA would have on council and partner organisations' resources.
- 15.15 The Head of Environmental Health and Licensing stated that the council had met its statutory obligations and it was for elected representatives to determine the policy.
- 15.16 Councillor Kitcat formally moved that the item be put to the vote.
- 15.17 Councillor Duncan seconded the motion.
- 15.18 The Chair noted that the motion had been moved and put it to the vote which was carried. She therefore stated that she would put the recommendations as listed in the report to vote.
- 15.19 **RESOLVED:**
- (1) That the council be recommended to approve the expansion of the Cumulative Impact Area and the Special Stress Area as shown on the map in appendix 3 to the report; and
 - (2) That the council be recommended to implement a 'matrix' approach to licensing decisions as shown in appendix 1 to the report.
- 15.20 The Chair noted that the meeting had been in progress for sometime and decided to hold a short adjournment for Members convenience.
- 15.21 The meeting was adjourned at 4.55pm.
- 15.22 The Chair reconvened the meeting at 5.00pm.

16. DCMS PROPOSALS TO DEREGULATE REGULATED ENTERTAINMENT

- 16.1 The Licensing Manager introduced the report and stated that the Department of Media & Support (DCMS), had issued a consultation document which outlined proposals to deregulate regulated entertainment for audiences of less than 5000 people. She stated that officers were concerned that such deregulation was not appropriate and sought agreement to respond to the consultation on that basis.
- 16.1 Councillor West expressed concern over the proposal and suggested that a response from the Council should be clear in that it was not an appropriate way forward and that the figure of 5000 was too high.
- 16.2 Members of the Committee expressed their concern over the proposals and the possibility of reduced numbers being introduced should the 5000 figure be seen as too high but deregulation still preferred by the government.
- 16.3 Councillor Duncan proposed that the recommendation should be amended to delete the wording after the word 'justified' as this would give a clear indication of the council's view on this matter.
- 16.4 Councillor J. Kitcat seconded the motion.
- 16.5 Councillor Lepper proposed that a letter should also be sent to the Secretary of State, outlining the council's view in the strongest terms that there should be no deregulation and pointing out how well the control of entertainment works in the city with regulation in place.
- 16.6 Councillor J. Kitcat seconded the motion.
- 16.7 The Chair noted that two motions had been moved and put each to the vote which were carried and therefore put the amended recommendation 1 and the additional recommendation 2 to the vote which were carried.
- 16.8 **RESOLVED:**
- (1) That the officers concerns regarding deregulated entertainment be noted and that the council's response to DCMS is that deregulation is not justified; and
 - (2) That officers be requested to write to the Secretary of State for Culture, Media & Support expressing the Committee's view that deregulation should not take place.

17. SCHEDULE OF REVIEWS

- 17.1 **RESOLVED:** That the report be noted.

18. SCHEDULE OF APPEALS RECEIVED

- 18.1 Councillor Duncan welcomed the outcome of the Sainsbury's appeal as detailed.
- 18.2 **RESOLVED:** That the report be noted.

19. ITEMS TO GO FORWARD TO COUNCIL

- 19.1 **RESOLVED:** That Item 15, Statement of Licensing Policy Consultation Response be referred to Council for approval.

The meeting concluded at 5.30pm

Signed

Chair

Dated this

day of