

# Licensing Panel (Licensing Act 2003 Functions)

**Agenda Item 83**  
Brighton & Hove City Council

|                          |   |  |                            |
|--------------------------|---|--|----------------------------|
| <b>Subject:</b>          | <b>Application for a Variation of a Premises Licence under the Licensing Act 2003</b> |  |                            |
| <b>Premises:</b>         | <b>Oseta Café<br/>34 North Road<br/>Brighton<br/>BN1 1YB</b>                          |  |                            |
| <b>Applicant:</b>        | <b>Elina Sellings</b>   |  |                            |
| <b>Date of Meeting:</b>  | <b>14 February 2018</b>   |  |                            |
| <b>Report of:</b>        | <b>Executive Director of Neighbourhoods,<br/>Communities &amp; Housing</b>            |  |                            |
| <b>Contact Officer:</b>  | <b>Name:</b>  | <b>Sarah Cornell</b>                           | <b>Tel: (01273) 295801</b> |
|                          | <b>Email:</b>   | <b>sarah.cornell@brighton-hove.gcsx.gov.uk</b> |                            |
| <b>Ward(s) affected:</b> | <b>St. Peter's And North Laine</b>  |  |                            |

## FOR GENERAL RELEASE

### 1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 To determine an application for a Variation of a Premises Licence under the Licensing Act 2003 for Oseta Cafe.

### 2. RECOMMENDATIONS:

- 2.1 That the Panel determine an application for a Variation of a Premises Licence under the Licensing Act 2003 for Oseta Cafe.

### 3. CONTEXT/BACKGROUND INFORMATION & CONSULTATION

- 3.1 The application is for a Variation of a Premises Licence under the Licensing Act 2003. The application proposes removal of condition 15. No beer, lagers or ciders will be sold at the premises.

- 3.2 Section 16 (operating schedule) of the application is detailed at Appendix A

3.3 Summary table of **existing and** proposed activities

|   | <b>Existing</b>   | <b>Proposed</b> |
|---|---|-----------------|
| <b>M) Supply of Alcohol</b>   | Every Day<br>12:00 to 22:00<br>On the premises                                | No change       |
| <b>O) Hours premises are open to public</b>                             | Mon – Fri<br>08:00 to 22:00<br>Sat<br>09:00 to 22:00<br>Sun<br>10:00 to 22:00 | No change       |
| <b>P) Conditions removed as a consequence of the proposed Variation</b> | Condition 15. No beer, lagers or ciders will be sold at the premises.         |                 |

3.4 Existing licence attached at Appendix B

3.5 Cumulative Impact. The premises falls within the Cumulative Impact Area (“The Area”) (see paragraphs 3.1 – 3.1.8).

**Representations received**

3.6 Details of the representations made are notified to applicants on receipt by the Licensing Authority using a pro-forma. A summary appears below:

3.7 Nine representations were received. They were received from local residents, a Resident Association and a local Councillor.

3.8 Representations received had concerns relating to Prevention of Crime and Disorder, Cumulative Impact, Public Safety & Prevention of Public Nuisance,

3.9 An agreement was received from Sussex Police which included conditions relating to Prevention of Crime and Disorder, Public Safety and Protection of Children from Harm and Prevention of Public Nuisance. The operating schedule was amended accordingly.

3.10 Full details of the representations and agreement are attached at Appendix C. A map of the location of the premises and showing those representations within the locality is at Appendix D. Please note that Responsible Authorities, Residents Associations and reps further afield are not shown on the map but can be found at Appendix C.

## **4. COMMENTARY ON THE LICENSING POLICY**

4.1 The following extracts from Brighton & Hove City Council Statement of Licensing Policy are considered relevant to this application and **are numbered as they appear in the policy**:

### **1. Introduction**

**1.1** This Statement of Licensing Policy has been prepared in accordance with the provisions of the Licensing Act 2003 (the Act) and having regard to Guidance issued by the Home Office under Section 182 of the act. The licensing authority is Brighton & Hove City Council. The purpose of this statement is to promote the licensing objectives and set out a general approach to making licensing decisions. The discretion of the licensing authority in relation to applications under the act is only engaged if 'relevant representations' are made by other persons or responsible authorities. This policy will inform the approach to be taken when deciding applications and imposing conditions when relevant representations are received. It is also intended as a guide for applicants as to what to include in their operating schedules, always recognising that if no representations are received, the application must be granted. The licensing authority must carry out its functions with a view to promoting the licensing objectives and this policy is framed around those objectives. Each application will be given individual consideration on its merit. The scope of this policy covers the following:

- Retail sales of alcohol;
- The supply of alcohol by or on behalf of a club, or to the order of, a member of the club;
- The provision of regulated entertainment;
- The provision of late night refreshment.

### **1.2 The licensing objectives are:-**

- (a) Prevention of crime and disorder;
- (b) Public safety;
- (c) Prevention of public nuisance;
- (d) Protection of children from harm.

### **1.3 Scope**

Licensing is about regulating licensable activities on licensed premises, by qualifying clubs and at temporary events. Any conditions attached to various authorisations will be focused on matters which are within the control of individual licensees and others with relevant authorisations; i.e. the premises and its vicinity. Each application will be given individual consideration on its merit. Nothing in this policy shall undermine the right of any individual to apply under the terms of the act for a variety of permissions and to have any such application considered on its individual merits. Similarly, nothing in this policy shall override the right of any person to make representations on an application or seek a review of a licence or certificate where provision has been made for them to do so in the act.

### 3 Special Policies and Initiatives

#### 3.1 Cumulative impact

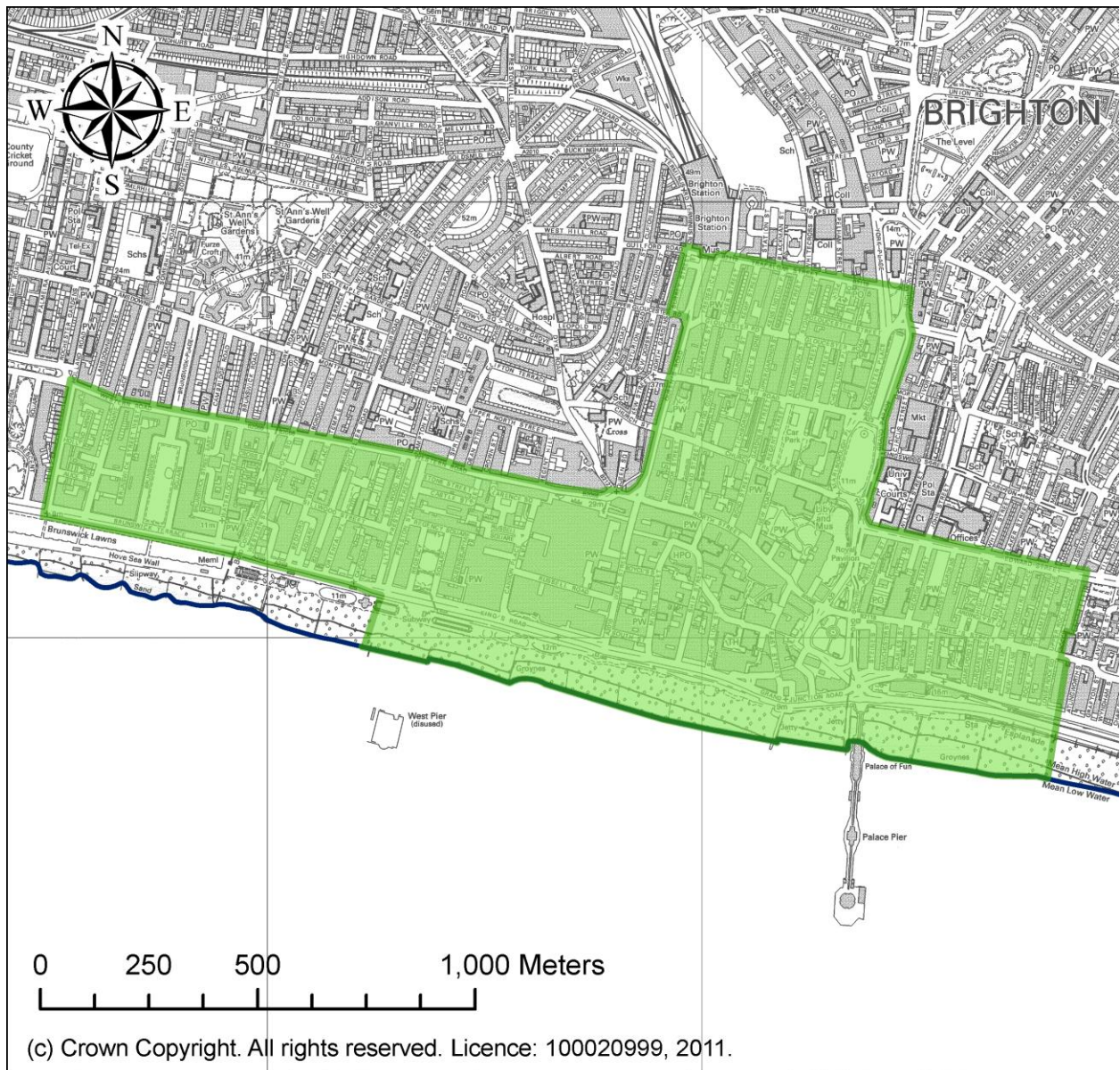
3.1.1 The licensing authority may receive representations from either a responsible authority or other persons that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives. This should not, however, be confused with 'need' which relates more to the commercial demand for a particular type of premises. The issue of 'need' is therefore a matter for the market to decide and can, in some circumstances, be a matter for planning consideration; need therefore does not form part of this licensing policy statement.

3.1.2 **Special Policy** - Cumulative Impact is defined as the potential impact upon the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area.

The licensing authority, after careful consideration, has determined that the concentration of licensed premises in an area of the city centre is causing problems of crime and disorder and public nuisance, and that therefore an approach to 'Cumulative Impact' is necessary as part of its statement of licensing policy. The first Special Policy incorporating a Cumulative Impact Zone (CIZ) and Special Stress Areas (SSA's) were adopted in March 2008. Since that date, the licensing authority has kept the CIZ and SSA's under review. On 15 December 2011 Full Council resolved to expand the CIZ and the special stress area, covering 1.5% of the administrative area of Brighton & Hove City Council. On 20th November 2014 Licensing Committee resolved to confirm the current CIZ and SSA as defined in the current Statement of Licensing Policy.

3.1.3 This special policy will refer to a Cumulative Impact Zone ("the CIZ") in the Brighton city centre, a detailed plan of which is shown below.

## Brighton & Hove City Council - Cumulative Impact Area



The Cumulative Impact Area comprises the area bounded by and including: the north side of Western Road, Brighton from its intersection with the west side of Holland Road to the junction with the west side of Dyke Road at its eastern end; from there, north-east to the junction of the north side of Ayr Street with the west side of Queens Road and then northward to the north-west corner of Surrey Street junction with Queens Road; thence along the north side of Trafalgar Street eastwards to its junction with York Place and continuing south-east across to Grand Parade, then south to the junction of Edward Street; along the north side of Edward Street to the east side of its junction with Egremont Place and southward along the eastern sides of Upper Rock Gardens and Rock Gardens; southward to the mean water mark and following the mean water line westward to a point due south of the west boundary of Holland Road; northward to that point and along the west side of Holland Road to its northwest boundary and then diagonally across Western Road to its intersection with the west side of Holland Road.

- 3.1.4 The special policy will only be overridden in exceptional circumstances. The effect of this special policy is that applications for new premises licences or club premises certificates within the area, or variations which are likely to add to the existing Cumulative Impact, will be refused following relevant representations. This presumption can be rebutted by the applicant if they can show that their application will have no negative Cumulative Impact.
- 3.1.5 This special policy also applies to all new premises licences and club premises certificates, for example pubs, restaurants and take-away establishments. Off licences also come within this policy as they can contribute to problems of street drinking, proxy purchasing, dispersal issues, preloading and excessive drinking and related disorder.
- 3.1.6 The presumption of refusal does not relieve responsible authorities or other persons of the need to make a relevant representation. If there are no representations, the licensing authority must grant the application in terms consistent with the operating schedule submitted.
- 3.1.7 Furthermore, this special policy is not absolute. Upon receipt of a relevant representation, the licensing authority will always consider the circumstances of each case and whether there are exceptional circumstances to justify departing from its special policy in the light of the individual circumstances of the case. If an application is unlikely to add to the cumulative impact of the area, it may be granted. The impact can be expected to be different for premises with different styles and characteristics. For example, while a large nightclub or high capacity public house might add to problems of cumulative impact, a small restaurant, theatre or live music venue (where alcohol is not the primary activity) may be considered exceptional circumstances. The fact that a premises will be/is exceptionally well managed with a well qualified applicant, or that there are no residential premises nearby, will not be considered exceptional.
- 3.1.8 If the licensing authority decides that an application should be refused, it will still need to show that the grant of the application would undermine the promotion of one of the licensing objectives and that conditions would be ineffective in preventing the problems involved.

### **3.3 The Matrix Approach**

#### **The Licensing Authority will support:**

- 3.3.1 Diversity of premises: ensures that there is a mix of the different types of licensed premises and attracts a more diverse range of customers from different age groups, different communities and with different attitudes to alcohol consumption. It gives potential for positively changing the ambience of the city or an area of it. This will have a positive effect in reducing people's fear of crime and in increasing the number of evening visitors to the city centre. The Community Safety Strategy recognises that too many single uses in a confined area and patrons turning out onto the streets at the same time may create opportunities for violent crime and public disorder and therefore supports: mixed use venues encouraging a wider age balance.

3.3.2 A “matrix” approach to licensing decisions has been adopted and is set out below. It provides a framework of what the licensing authority would like to see within its area and gives an indication of the likelihood of success or otherwise to investor and businesses making applications.

Matrix approach for licensing decisions in a Statement of Licensing Policy (times relates to licensable activities)

|   | <b>Cumulative Impact Area</b> | <b>Special Stress Area</b> | <b>Marina</b> | <b>Other Areas</b>   |
|---|-------------------------------|----------------------------|---------------|--|
| <b>Restaurant</b>                               | Yes (midnight)                | Yes (midnight)             | Yes           | Yes (midnight)   |
| <b>Café bar</b>                                 | Yes (11.30)                   | Yes (midnight)             | Yes           | Yes (midnight)   |
| <b>Late Night Takeaways</b>                     | No                            | Yes (midnight)             | Yes           | Yes (midnight)   |
| <b>Night Club</b>                               | No                            | No                         | Yes           | No   |
| <b>Pub</b>                                      | No                            | Yes (11pm)                 | Yes           | Yes (midnight)   |
| <b>Non-alcohol lead (e.g. Theatre)</b>          | Yes (favourable)              | Yes (favourable)           | Yes           | Yes (favourable)   |
| <b>Off-licence</b>                              | No                            | No                         | Yes           | Yes ( Up to 11pm but if in densely residential area may be earlier – see note 7 below) |
| <b>Members Club (club premises certificate)</b> | Yes (<100 capacity) (11pm)    | Yes (<100 capacity) (11pm) | Yes           | Yes  |

Notes on matrix

Subject to the following notes, the policy, as represented in the matrix, will be strictly adhered to:

- 1) Each application will be considered on individual merit
- 2) Applications within the CIZ are subject to the special policy on cumulative impact at para 3.1, and those within the special stress area to the special stress policy considerations at para 3.2.
- 3) Departure from the matrix policy is expected only in exceptional circumstances

- 4) Exceptional circumstances will not include quality of management or size of venue except where explicitly stated in policy matrix.
- 5) Exceptional circumstances may include: consultation with and meeting requirements of responsible authorities, an appropriate corporate social responsibility policy, community contribution to off set impact (such as financial contribution to infrastructure), community support, alcohol sale ancillary to business activity (demonstrable to responsible authorities and licensing authority, for instance by licence condition allowing authorised officers access to sales accounts).
- 6) The following licensing activities are encouraged and valued by the licensing authority: outdoor regulated entertainment, community based street parties, members clubs, traditional pubs outside the city centre and non-alcohol led licensable activities, particularly within city centre.
- 7) Other Areas; consideration will be given to the nature of the area and location in relation to any application. In a residential area for example the concerns of local residents will be relevant when considering applications for off-licences, pubs or café bars, especially if there is evidence of anti-social behaviour, street drinking or underage drinking. Earlier closing times may be appropriate. Regard will be had to the Public Health Framework for assessing alcohol licensing and the Street Community and Drug Activity Profile. These documents are available on the following page of our website [www.brighton-hove.gov.uk/licensingact](http://www.brighton-hove.gov.uk/licensingact).
- 8) In an area where there are already several existing off-licences and where representations are received about negative cumulative impact on the licensing objectives of a further premises, the application may be refused on these grounds.
- 9) Outdoor events will be supported where arranged through the council's event planning process. Generally, regulated entertainment in the open air including tents and marquees should have a maximum closure hour of 2300. Earlier hours may be imposed in sensitive open spaces or near residential areas. The Licensing Authority will have regard to Noise Council guidance.

3.3.3 Café Bars - the licensing authority may be prepared to look favourably upon an application for the grant of a licence, subject to the following conditions that will prevent the premises becoming a public house.

- The sale of intoxicating liquor and other beverages shall be waiter/waitress service for consumption by persons seated at tables.
- Substantial food shall be available at all times.

## **4 Prevention of Crime and Disorder**

4.1.1 The following details and measures are intended to address the need for the prevention of crime and disorder which may be associated with licensed premises and certificated club premises. Conditions attached to licences and certificates will, as far as possible, reflect local crime reduction strategies.

4.1.2 The licensing authority acknowledges that training and good management play a key part in preventing alcohol and drug related crime. The authority expects that all licensees of on-licensed premises attend training programmes which will raise their awareness of the issues relating to drugs and violence in licensed premises, and that suitable training be extended to all bar staff and door supervisors so that drug dealers and users will be deterred from using licensed premises for illegal



purposes and that incidents of violence in licensed premises will be reduced. Licensees are also encouraged to attend training programmes to help identify children at risk and issues of basic child protection. It is the duty of the designated premises supervisor (DPS) to train staff on induction concerning conditions on their premises licence.

4.1.3 It is expected that the DPS will spend a significant amount of time on the premises. When not on the premises it will be essential that the DPS is contactable, particularly should problems arise with the premises and that staff are authorised by the DPS.

4.1.4 The location of violent attacks, anti-social behaviour and hate crime or related incidents may be used to justify closing times.

## **5 Public Safety**

5.1 The following details and measures are intended to address the need for the protection of public safety which may be associated with licensed premises and certificated club premises.

5.1.1 The permitted capacity is a limit on the number of persons who may be on the premises at any time, following a recommendation by the relevant fire and rescue authority under the Regulatory Reform (Fire Safety) Order 2005. For any application for a premises licence or club premises certificate for premises without an existing permitted capacity where the applicant wishes to take advantage of the special provisions set out in section 177 of the 2003 Act, the applicant should conduct their own risk assessment as to the appropriate capacity of the premises. They should send their recommendation to the fire and rescue authority which will consider it and decide what the “permitted capacity” of those premises should be.

5.1.3 Conditions may be imposed in accordance with operating schedules to protect public safety including where justified:

(a) provision of closed-circuit television and panic buttons.

(b) use of shatterproof drinking vessels; bottles requiring use of toughened glass or plastic should normally be required unless applicants can show exceptional reasons.

(c) use of door supervisors, licensed by the Security Industry Authority.

(d) requirement of a minimum of a licensed door supervisor for every 100 customers in nightclubs and large city centre pubs or as indicated by risk assessment.

(e) occupant capacity conditions will be applied where appropriate.

(f) the provision of designated and suitably trained first aiders.

## **6 Prevention of Public Nuisance**

- 6.1 The following details and measures are intended to address the need for the prevention of public nuisance which may be associated with licensed premises and certificated club premises.
- 6.1.1 In determining applications for new and varied licences, regard will be had to the location of premises, the type and construction of the building and the likelihood of nuisance and disturbance to the amenity of nearby residents by reason of noise from within the premises, as a result of people entering or leaving the premises or from individuals or groups of customers gathered outside (e.g. in order to smoke).
- 6.1.5 In determining applications for new licences or extensions in hours or terminal hours of licensed premises, regard will be had to late night public transport availability and location of taxi ranks to aid dispersal of customers.
- 6.1.6 Reasonable controls are available to all premises operators to minimise the impact of noise from customers outside. The council's Environmental Health Department has issued guidance on a number of steps that can be taken in this respect which are endorsed by this policy (see 6.2 below).

### **6.2 Smoking Advice**

- 6.2.1 Premises licence holders will be expected to:
- Develop a management plan on how to manage smoking on your premises and ensure that all staff are aware of the contents of this plan, and that it is effectively implemented. Noise from people smoking and talking can be intermittent, vary in character and volume and be intrusive. An effective smoking management plan will help prevent neighbours being disturbed.
  - Comply with any planning conditions restricting the use of outdoor areas.
  - Ensure that any structures used by smokers comply with the design criteria detailed in the Heath Act 2006 and that any structures, awnings, retractable canopies, etc. have the relevant planning permission.
  - Ensure any new lighting to outdoor areas must be designed so as not to cause a light nuisance to neighbours and again have the relevant planning permission and building control consent.
  - Ensure that the conditions on the premises licence are complied with. There may be conditions restricting the hours of use of gardens and outdoor areas. Having reviewed the contents of the premises licence you may find it necessary to request a variation of your licence.
  - Licence tables and chairs on the Public Highway under the provisions of the Highways Act 1980. These licences may have conditions restricting the times that the area can be used.
  - Ensure drinks, glasses and bottles are not taken onto the highway unless there is a tables and chairs licence permitting use. A system should be

adopted to prevent theft and 'spiking' of drinks, and reminding customers not to leave unattended items.

- Discourage smokers remaining in gardens and outdoor areas and determine terminal hours.
- Discourage smokers remaining outside by removing/disabling tables and chairs or prohibiting their use after a certain time. Lights and heaters will also be turned off.
- Introduce a system that after a certain time the number of smokers outside are restricted to a maximum number. Staff will be needed to manage this restriction.
- Employ staff and/or SIA registered door supervisors to manage doors and control customers and smokers entering and leaving the premises. Staff positioned on the doors can help to encourage customers not to cause a noise problem. It may be that staff are required to manage doors after a certain time, particularly during the hours when neighbouring residents are trying to sleep.
- Ensure door supervisors maintain order outside venues and protect customer safety. BCRP supports the use of Night Safe. Radio net and other pager systems and pub watch schemes can be used to provide for rapid police response and alert other venues where customers and staff are endangered.
- Position signs to remind customers that the premises is in an area where people live. It is not always obvious in busy commercial streets with flats above. By changing the design and wording of signs customers do not forget. Signs can be located in and outside the premises and on tables.
- Use CCTV to manage outside areas.

6.2.2 Licensed premises should normally display prominent, legible signs at exits reminding customers to leave in a quiet, peaceful, orderly manner.

## **8 Integration of Strategies**

8.1 The licensing authority shall secure the proper integration of this policy with local crime prevention, planning policy, transport, tourism and cultural strategies by:-

- Liaising and consulting with the Sussex Police, Community Safety Forum, Sustainability Commission representatives and following the guidance in community safety and crime and disorder strategy
- Liaising and consulting with Public and Alcohol Programme Board
- Liaising and consulting with the East Sussex Fire & Rescue Service
- Liaising and consulting with the Local Strategic Partnership, Safety Advisory Group (Emergency Planning) and Equalities and Social Justice Consultation Forum
- Liaising and consulting with the Planning authority
- Liaising and consulting with the Highways authority
- Liaising and consulting with local business and business associations. Having regard to any future documents issued relating to the Private

Security Industry Act 2001, for example liaison or information sharing protocols

- Liaising and consulting with the Trading Standards Team, for example with regard to test purchasing codes of practice

- 8.2 In line with statutory requirements and the Council's Inclusion Policy, the Licensing Authority shall have due regard to the need to eliminate unlawful discrimination, and to promote equality of opportunity and positive relations between persons of diverse backgrounds, for example communities of interest such as: lesbian, gay, bisexual and transgender people; disabled people; racial and ethnic groups; religious and faith groups.
- 8.3 This policy supports the aims of the tourism strategy, recognising the benefits for the tourism economy of creating a safer and more attractive city centre and improving competitiveness with other European cities. The Licensing Committee should receive any reports relevant to the needs of the local tourist economy and the cultural strategy for the area to ensure that it considers these matters.
- 8.4 The Licensing Committee should receive relevant information relating to the employment situation of the area and the need for new investment and employment where appropriate.
- 8.5 Specific conditions may be attached to premises licences to reflect local crime prevention strategies. Such conditions may include the use of closed circuit television cameras, use of the NightSafe radio system or accredited scheme, the provision and use of shatterproof drinking receptacles, drugs and weapons search policy, the use of registered door supervisors, specialised lighting requirements, hours of opening. Certificates issued to club premises shall reflect local crime prevention strategies and may include any or all of the requirements listed above.
- 8.6 The licensing authority will have regard to the need to disperse people quickly and safely from the city centre to avoid concentrations which may produce disorder and disturbance.

## **5. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

- 5.1 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 Monica Brooks*

*Date: 26/01/18*

### Legal Implications:

5.2 The licensing authority must act to promote the four licensing objectives which are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

The licensing authority must have regard to its statement of licensing policy and the guidance issued by the Secretary of State in carrying out its functions.

*Lawyer Consulted: Rebecca Sidell*

*Date: 26/01/18*

### Equalities Implications:

5.3 Diversity is valued and strong, safe communities are vital to future prosperity. Licensing policy aims to protect children from harm including sale and supply of alcohol to children.

### Sustainability Implications:

5.4 Licensing policy aims to prevent public nuisance and develop culture of live music, dancing and theatre.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Appendix A – Section 16 (operating schedule) of the Application
2. Appendix B – Part A of Premises Licence
3. Appendix C – Representations and agreement
4. Appendix D – Map of area

### **Documents in Members' Rooms**

Brighton & Hove City Council, Licensing Act 2003: Statement of Licensing Policy 2016 as amended 24th March 2016.

Home Office, Revised Guidance issued under section 182 of the Licensing Act 2003, April 2017.

Public Health Framework for assessing Alcohol Licensing. Annual Report – Ward. 3rd edition. Public Health Intelligence. October 2017

## **Background Documents**

Brighton & Hove City Council, Licensing Act 2003: Statement of Licensing Policy 2016 as amended 24th March 2016.