

# Licensing Panel (Licensing Act 2003 Functions)

**Agenda Item**  
Brighton & Hove City Council

<b>Subject:</b>	<b>Review of a Premises Licence under the Licensing Act 2003</b>		
<b>Premises:</b>	<b>Pascals Bistro Bar 6 Queens Place Hove BN3 2LT</b>		
<b>Premises Licence Holder:</b>	<b>Said Pascal Madjoudj</b>		
<b>Date of Meeting:</b>	<b>30 July 2021</b>		
<b>Report of:</b>	<b>Executive Director for Housing, Neighbourhoods &amp; Communities</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Jo Osborne</b>	<b>Tel: (01273) 292100</b>
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<b>Ward(s) affected:</b>	<b>Brunswick And Adelaide</b>		

## FOR GENERAL RELEASE

### 1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 To review a Premises Licence for Pascals Bistro Bar under the Licensing Act 2003.

### 2. RECOMMENDATIONS:

- 2.1 That the Panel review the licence granted to the premises known as Pascals Bistro Bar under the Licensing Act 2003.

### 3. CONTEXT/ BACKGROUND INFORMATION & CONSULTATION

- 3.1 Existing licence attached at Appendix A.
- 3.2 Brighton & Hove City Council is both the relevant Licensing Authority and a Responsible Authority in respect of any premises and may in its capacity apply under Section 51 of the Licensing Act 2003 for a review of any premises licence in respect of the premises.
- 3.3 An application was received by the Licensing Authority on 11 June 2021 from Sussex Police, to review the licence granted to the premises known as Pascals Bistro Bar, 6 Queens Place, Hove, BN3 2LT. The premises falls within the Special Stress Area.
- 3.4 The grounds for the review relate to the following Licensing objective:
- The Prevention of Crime and Disorder

Full details of the grounds for the review and supplementary information are in Appendix B.

3.5 At this hearing the licensing authority must:

- Consider the application made in accordance with Section 51
- Consider any relevant representations
- Take such steps (if any) as are considered appropriate for the promotion of the Licensing objectives. These steps are
  - to modify the conditions of the licence
  - to exclude a licensable activity
  - to remove the designated premises supervisor from the licence
  - to suspend the licence for a period not exceeding 3 months, or
  - to revoke the licence.

And for this purpose, the conditions of a premises licence are modified if any of them are altered, omitted or any new condition is added. It may provide that the modification or exclusion have effect for a specified period not exceeding 3 months. The determination, if not completed at the hearing, shall be within 5 working days of the hearing. Such determinations do not have effect until after the appeal period or, if an appeal is lodged, until after the appeal is disposed of.

### **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 Five representations have been received from local residents, Ward Councillors, The Licensing Authority and The Food, Health and Safety Team on the grounds of the Prevention of Crime and Disorder, Public Safety and Prevention of Public Nuisance, supporting the application submitted by Sussex Police seeking the revocation of the licence.
- 3.8 Full details of the supporting representations from local residents and Ward Councillors are attached at Appendix C.
- 3.9 Full details of the supporting representation from The Licensing Authority can be found at Appendix D.
- 3.10 Full details of the supporting representation from The Food, Health and Safety Team can be found at Appendix E.
- 3.11 A response from the legal representative of the Premises Licence Holder Mr Said Pascal Madjoudj was received by the Licensing Authority on 9<sup>th</sup> July 2021 in response to Sussex Police application to revoke Premises Licence. This response included photographs on refurbished toilets and an updated Staff Handbook for the premises. Further correspondence with photographs of the premises and a letter from the premise's landlord were received on 20<sup>th</sup> July 2021. This information can be found at Appendix F.

3.12 A map detailing the location of the premises is attached at Appendix G.

#### **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. This policy takes effect from 4 February 2021. 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.

###### **1.1 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**

**1.3.1** 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.

### 3.3 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)

#### Matrix approach for licensing decisions in a Statement of Licensing Policy

	<b>Cumulative Impact Area</b>	<b>Special Stress Area</b>	<b>Other Areas</b>
<b>Restaurant</b>	Yes (midnight)	Yes (midnight)	Yes (midnight)
<b>Café</b>	Yes (10 pm)	Yes (10 pm)	Yes (10 pm)
<b>Late Night Takeaways</b>	No	Yes (midnight)	Yes (midnight)
<b>Night Club</b>	No	No	No
<b>Pub</b>	No	Yes (11pm)	Yes (midnight)
<b>Non-alcohol lead (e.g. Theatre)</b>	Yes (favourable)	Yes (favourable)	Yes (favourable)
<b>Off-licence</b>	No	No	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
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## 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 offset 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 cafes, 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 on 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 or where the premises is situated within a parade with another off licence 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 or restrictions placed on the terminal hour to reflect opening hours of other shops.
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.
10. Non-alcohol led category does not include "alcohol in shared workplaces". It is recommended that sale of alcohol in shared workspaces should have a terminal hour of no later than 10pm. For further advice and guidance on "alcohol in shared workplaces" please see paragraph 3.3.4-3.3.6.

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

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.

**4.1.1** 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.

**4.1.2** 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.

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

**4.1.4** Measures put in place should support the intentions of Operation Marble (police operational order), which aims to prevent incidents of crime and disorder within the night time economy, at weekends. Operation Marble operates with a view to minimising the risk to the public of being a victim of public place violent crime; to reduce incidents of violent crime and public disorder within the city centre; to deal positively with offences and offenders; to secure and preserve evidence which will assist in the prosecution of offenders and to support the night time economy and the responsibly run businesses within it.

## **4.2 Sussex Police**

**4.2.1** Sussex Police have a specific Operation relating to the night time economy called Operation Marble (detailed in 3.4.1) and work closely with partners to ensure a safe and vibrant city centre. There continues to be an increasing demand for resources further into the early hours of the morning with the highest concentration of crimes occurring between 21:00 and 06:00 on a Friday into a Saturday and between 20:00 and 06:00 on a Saturday night into a Sunday. The data set used shows that up to 80% of arrests made in the timeframe 20:00 – 06:00 on these days were affected by alcohol. For full details of these statistics see the Cumulative Impact Assessment at Appendix E of our Statement of Licensing Policy.

**4.2.2** The dealing and use of drugs remains an issue across the city and Sussex Police welcome proactive policies from licensed premises. A drug safe and seizure recording initiative is in place of which further details can be obtained by contacting Brighton & Hove Police Licensing ([brighton.licensing@sussex.pnn.police.uk](mailto:brighton.licensing@sussex.pnn.police.uk)). This initiative encourages licensed premises with Door Supervisors to search and seize drugs from persons attempting to enter their premises and ensures that once drugs are removed from persons, they can be safely collected and destroyed by Sussex Police.

**4.2.3** Dispersal from the city centre during the late evening and early morning remains a policing challenge. Over recent years, there has been a proliferation of off-licences and late night refreshment venues along the city's arterial routes. This has led to incident 'hot spots' where patrons from the night time economy continue to interact, albeit away from any safety measures afforded by on-licences. As such, Sussex Police support the Council's Special Policy in offering guidance to both applicants and the Licensing Committee in relation to off-licences and late night refreshment licences.

**4.2.7** Policing the night time economy continues to provide a challenge and in the climate of limited resources and newly emerging problems, Sussex Police support maintaining the council's Special Policy which defines cumulative impact and special stress and will continue to take enforcement action where appropriate if the actions of a Premises Licence Holder, Designated Premises Supervisor, Door Supervisors or Staff have fallen below the high standard expected across the city. Sussex Police also recognise and support businesses which are aware of their social responsibilities and as such, actively contribute towards keeping Brighton & Hove a safe and enjoyable city.

### **4.3 Care, control and supervision of premises**

**4.3.1** The Licensing authority supports the Business Crime Reduction Partnership and other approved schemes. Where appropriate, premises licence holders should be members of the BCRP for the deterrence to violent crime that such membership provides. The BCRP NightSafe radio scheme is normally expected as an operational requirement for city centre bars, clubs and pubs and is an example of good practice in achieving the aim of reducing crime and disorder and improving public safety. Well managed pub-watch schemes provide information exchange between the premises licence holders and responsible authorities that reduce and deter violent crime and disorder. The council will support a responsible licensing scheme.

**4.3.2** The effective management and supervision of a venue is a key factor in reducing crime and disorder, both within it and outside. The police will consider the applicants, objecting to the application where appropriate. The police may suggest crime prevention measures in relation to, for example, the internal layout of the premises, closed-circuit television, help points, lighting and security staff. The police may ask for conditions which support such measures to be imposed when licensing applications are granted, eg type of licence, capacity, operating hours restrictions.

**4.3.3** Following the grant of a licence, the management and supervision of the premises, in so far as it might impact on crime and disorder, will continue to be monitored. Particular attention will be paid to any licensed premises where there is evidence of criminal activity or any association with racist or homophobic crime. The licensing authority will keep itself well briefed on the nature, location and type of

premises where alcohol related violence and disorder are occurring so it can take full account of the facts and avoid exacerbating problems as required by the Community Safety Strategy. Where licensed premises are found to cause nuisance or be associated with disorder or unreasonable disturbance, the review process may be invoked, and powers of revocation or the imposition of conditions may be considered. Conditions may include use of closed-circuit television, licensed door supervisors and earlier closing times. Such action to restrict the operation may be taken for trial periods to allow businesses an opportunity to remedy existing disorder, nuisance or disturbance.

**4.3.4** This policy recognises the use of registered Door Supervisors All Door Supervisors will be licensed by the Security Industry Authority. Mobile security units and similar systems are in use by some premises operators as a means of providing security cover at very short notice at premises which may not normally require a permanent security presence. This policy endorses the use of units following such guidance and standards in appropriate circumstances.

**4.3.5** The development of codes of practice and general operating standards for security companies is encouraged for local businesses; premises operators are urged to ensure that security services, when engaged, are provided by suitably qualified businesses operating to recognised standards and who should be working towards SIA accreditation.

**4.3.6** Enforcement will be achieved by the enforcement policy appended (Appendix B of SoLP) and at pages 14-23 of this report.

## **5 Public Safety**

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.

**5.1.2** Normally in the city centre, pubs and clubs will be expected to operate using polycarbonate or toughened/shatterproof glass.

**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**

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 (eg in order to smoke).

**6.1.2** Applications for new licences or for the extension in size of licensed premises should not normally be granted if the premises will use amplified or live music and operate within or abutting premises containing residential accommodation except that occupied by staff of the licensed premises. A condition may be imposed on new licences that entertainment noise shall be inaudible in any residence. Noise emanating from within licensed premises should not normally be audible outside.

**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 their 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 it may be 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**

**8.1.1** 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

**8.1.2** 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.

**8.1.3** 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.

**8.1.4** 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.

**8.1.5** 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.

**8.1.6** 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.

## **8.2 Other regulatory regimes**

**8.2.1** This policy avoids duplication with other regulatory regimes wherever possible. The following notes are made with regard to specific regimes:

### **Health and Safety**

Certain premises will be the subject of health and safety enforcement by the local authority or the Health and Safety Executive (HSE). If other existing law already places certain statutory responsibilities on an employer or operator of premises, for example the Management of Health and Safety at Work Regulations 1999, it will not be necessary to impose the same or similar duties on the premises licence holder or club. However, existing duties will not always adequately cover specific issues that arise on the premises in connection with, for example, certain types of entertainment, and where additional and supplementary measures are necessary to promote the licensing objectives, necessary, proportionate conditions will need to be attached to a licence.

## **Fire Safety**

Premises and their operators will be regulated by general duties under current fire safety regimes and the Regulatory Reform (Fire Safety) Order 2005 rather than licensing provisions.

## **Noise**

Statutory and public nuisances are dealt with by the local authority's Environmental Health department under the Environmental Protection Act 1990, Noise Act 1996 and associated legislation. Noise from commercial premises may often fall under review powers set out in licensing provisions and closure powers in anti-social behaviour provisions.

## **Equality Act 2010**

The Public Sector Equality Duty obliges public authorities to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between persons who share protected characteristics and persons who do not share it. The local authority's equality and inclusion policy produced under these obligations shall include reference to this statement of licensing policy.

## **Community relations**

Integration of corporate strategies with licensing policy will include the Inclusive Council Policy which recognises the council's role, as a community leader, to promote community cohesion and good relations between diverse communities. Measures to address prevention of crime and disorder recognise the need to improve wellbeing and safety of all the communities in the city. Licensing policy supports the Crime and Disorder Reduction Partnership's crime reduction strategy. In particular it seeks to confront and reduce racist, homophobic, transphobic and religiously motivated crimes, incidents and anti-social behaviour.

## **Anti-Social Behaviour, Crime and Policing Act 2014**

Contains powers to close premises that are causing nuisance or disorder. These powers can be exercised by the council or Police and they replace the closure powers in the Licensing Act 2003. The Act also contains powers to issue Community Protection Notices in respect of persons or businesses committing anti-social behaviour which is spoiling a community's quality of life.

## **Litter and Smoking**

CityClean contractors have Clean Neighbourhoods powers to enforce premises operators' responsibilities to keep frontages clear of litter.

## **Gambling Act 2005**

In relation to casinos and bingo clubs, the principal purpose is gaming. The sale of alcohol and the provision of entertainment in such premises is incidental to gaming and in determining whether to permit entertainment that constitutes regulated entertainment

under the act, gaming license committees and / or the Gambling Commission will have taken into account relevant government guidance. Accordingly, it is felt that the licensing objectives will have been, or will be in the main, adequately considered by such committees and duplication of conditions should be avoided when considering applications under the 2003 Act where relevant representations have been made.

### **8.3 Enforcement**

**8.3.1** The Enforcement of licensing law and inspection of licensed premises is detailed in the Protocol between Sussex Police, the East Sussex Fire & Rescue Service and Brighton & Hove City Council. This protocol reflects the need for more efficient deployment of Police and Local Authority staff commonly engaged in licensing enforcement and can be found at Appendix D (Lead Agency Status) of the Statement of Licensing Policy. In addition, the Licensing Authority will have regard to its published Licensing Enforcement Policy in making enforcement decisions in accordance with Brighton & Hove City Council's Statement of Licensing Policy (Appendix B). In order to better target enforcement resources, inspections will be undertaken outside of normal office hours and the sharing of information between all enforcement agencies will be encouraged through joint meetings or similar arrangements.

**8.3.2** Attention is drawn to the targeting of agreed problem and high risk premises requiring greater attention as identified in the protocol. A number of other council and government policies, strategies and guidance documents must be taken into account to complement the policy, including:

- Community Safety & Crime Reduction Strategy
- Drugs and alcohol strategies – local alcohol harm reduction strategy
- Objectives of the Security Industry Authority
- The Anti-Social Behaviour Act 2003/ASBPC Act 2014
- The Health Act 2006
- The Violent Crime Reduction Act 2006
- Policing and Crime Act 2009

### **9 Reviews**

**9.1.1** Reviews represent a key protection for the community. Where the licensing authority considers action necessary under its statutory powers it will take necessary steps to support the licensing objectives. Action following review will be informed by licensing enforcement policy – Appendix B of the SoLP see below on page 14 of this report.

**9.1.2** Where style of operation of a premises leads to applications concerning likelihood of racist, religiously motivated, homophobic or transphobic crimes or incidents, the review process should also support the community safety policy. Action should be proportionate and licences would normally be suspended or revoked in these circumstances to deter further incidents.

## APPENDIX B - Licensing Enforcement Policy

### 1.0 STATEMENT OF OBJECTIVES

The council as licensing authority and responsible authority is committed to the Council's priorities and will inform the enforcement actions taken. Amendments to priorities will be embedded automatically.

- 1.1 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 Regulators Compliance Code.
- 1.2 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.
- 1.3 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.
- 1.4 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 coordinating 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 in 2008. The current version is appended (appendix A).

## **11. 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 H).

### **ANNEX A**

#### **“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 other persons 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:

- Removal of the designated premises supervisor and his/her replacement (the manager is removed);
- Suspension of the licence for between one day and three months according to the circumstances.
- Restriction on trading hours – cutting hours of trading in alcohol.
- 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 B**

### **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.

7. The licensed premises shall join the Business Crime Reduction Partnership scheme.

## **TRAINING**

8. All staff to read and sign a declaration that they understand the law every time they start a shift.

9. 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**

10. 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.

11. No alcohol sales – Friday to Sunday. Impact on all four licensing objectives.

## **ALCOHOL DISPLAYS**

12. No displays of alcohol or advertising of alcohol promotions that can be seen from outside the premises.

13. No alcohol stocks promoted alongside goods likely to appeal to children (eg confectionary, toys).

## **CUTTING DOWN ON SHOPLIFTING**

14. SIA registered security staff to be present at alcohol aisles during opening times to prevent attempted under age sales or theft.

15. Location of alcohol stocks/displays not to be sited near the entrance/exit to deter shoplifting.

16. No direct public access to alcohol products – like tobacco, alcohol to be kept behind a dedicated kiosk.

## **NAMING AND SHAMING**

17. 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**

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

19. 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.

20. 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.

21. 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.

22. 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.

23. Where there is no designated smoking area, readmission after midnight should normally be prohibited.

## 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 Michael Bentley*

*Date: 20/07/2021*

### 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: 20/07/21*

### 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:**

Appendix A – Part A of Premises Licence

Appendix B – Review Application

Appendix C – Supporting Representations from local residents and Ward Councillors

Appendix D – Supporting Representation from Licensing Authority

Appendix E – Supporting Representation from Food, Health & Safety Team Brighton & Hove City Council



Appendix F - Response from Premises Licence Holders legal representative

Appendix G - Map of area showing Premises

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

Brighton & Hove City Council, Licensing Act 2003: Statement of Licensing Policy 2021.

Home Office, Revised Guidance issued under section 182 of the Licensing Act 2003, April 2018.

Public Health Framework for assessing Alcohol Licensing. Annual Report – Ward. 5<sup>th</sup> edition. Public Health Intelligence. January 2019

### **Background Documents**

Brighton & Hove City Council, Licensing Act 2003: Statement of Licensing Policy 2021.

