

LICENSING COMMITTEE (LICENSING ACT 2003)

Agenda Item 23

Brighton & Hove City Council

Subject:	Work of the Licensing Authority 2011/13		
Date of Meeting:	14 March 2013		
Report of:	Head of Planning and Public Protection		
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Ward(s) affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report sets out the licensing functions carried out between 1 April 2011 and 31 January 2013.

2. RECOMMENDATIONS:

- 2.1 That the committee notes the contents of this report.
- 2.2 That Members consider the significant rise in temporary event notices as a matter for future policy consideration.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The number of premises in Brighton & Hove during 2011/12 (latest figures reported to Home Office) is 1507 made up of 1460 premises licences and 47 club premises certificates. Included in that figure are 58 applications for new licences with 53 applications for new licences being granted (5 refused).
- 3.2 In 2011/12 the council received 36 applications for variations to premises licences, 32 of which were granted. 58 premises went to panel hearings. 41 minor variations were received during this period; 38 were granted. 10 reviews were carried out of premises licences.
- 3.3 Between 1 April 2012 and 31 January 2013, 34 applications for new licences were received with 24 new licences being granted. 22 applications for variations to premises licences were received of which 12 were granted. 45 premises went to panel hearings. 69 minor variations were received during this period; 50 were granted. Two reviews were carried out of premises licences.
- 3.4 2011/12 saw 946 Temporary Event Notices (TENs) being processed 51 of which were withdrawn and 381 personal licences issued during that time; 3 personal licence applications went to a hearing. The number of TENs and personal licences issued from 01.04.12 to 31.12.12 are 768 and 241.

3.5 A list of all reviews and appeals carried out between 2011 to date can be found at appendix 1 and 2. In addition, details of the number of TENs has been included in appendix 3 and the number of Licensing Panels can be found at appendix 4.

3.6 During 2010 and 2011, Brighton and Hove City Council renewed and refreshed its Statement of Licensing Policy (SOLP); in 2010 a full consultation was undertaken and the policy was amended in 2011 to increase the cumulative impact zone and special stress areas. Following further consultation, a matrix approach for licensing decisions was included in the policy in December 2011.

3.7 Licensing regulation was amended by the Police Reform and Social Responsibility Act 2011 (PRSRA) and was integrated into the December 2011 SOLP.

3.8 **Press interest:**

Licensing issues in Brighton and Hove have been at the forefront of the media during 2011/13. Press interest includes:

April 2011/March 2012: Press interest included 27 items in the Argus; articles in Gscene, Brighton & Hove News (web-based), Daily Mail, Sunday Telegraph, Morning Advertiser, Watford Observer, Local Government Lawyer, Harpers Wine and Spirit, Noise Bulletin; the Latest; six items on BBC Radio Sussex.

April 2012/January 2013: 17 items in the Argus; four items on BBC Radio Sussex and one on Juice FM; featured on Fake Britain, BBC 1.

As well as the work of the licensing panels, hot topics were: counterfeit alcohol, CCTV in taxis, licence reviews, Sainsbury's appeal, lap dancing clubs, the alcohol debate and the cumulative impact zone

3.9 **Sussex Police and Brighton and Hove Council enforcement priorities are:**

1. Sale of high strength beer and cider, incorrectly labelled beers attracting street drinking in over 20 specific off licences serving street drinkers around the city, particularly: York Place/London Road, Queen's Road and Western Road, Brighton/Hove boundary. Currently, the statement of licensing policy recognises the Level as a high risk area for street drinkers; in future other locations may become legitimate policy considerations for Licensing Committee.
2. Investigation of smuggled, falsely described and illicit alcohol supply in the food chain is a continuing issue for the alcohol programme board. Multiagency work between trading standards, licensing and environmental health officers, Sussex Police Licensing Unit and HM Revenue and Customs is designed to reduce evasion of duty, labelling and food traceability offences, food standards and trademark offences, reducing cheap, illicit alcohol in the market.

3.10 **National matters: LNL and EMRO**

The Early Morning Restriction Order was an uncommenced power within the Licensing Act 2003, reintroduced by the Police Reform and Social Responsibility Act 2011 (PRSRA) at Part 2, section 119.

- 3.11 The Late Night Levy (“the levy”) is a power, conferred on licensing authorities by provision in Chapter 2 of Part 2 of the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) as part of “Rebalancing the Licensing Act”. This enables licensing authorities to charge a levy to persons who are licensed to sell alcohol late at night in the authority’s area, as a means of raising a contribution towards the costs of policing the late-night economy. The decision to introduce the levy is an option available to all licensing authorities in the whole of their respective areas.
- 3.12 The levy is a power and some licensing authorities will not consider that it is appropriate to exercise it. The licensing authority may wish to decide whether or not it believes it has a viable proposal to introduce the levy before incurring the costs of the formal consultation process. At this stage, some licensing authorities may decide that the levy will not generate enough revenue to make it a viable option in their area.
- 3.13 Rationale
When considering whether to introduce a levy, licensing authorities should note that any financial risk (for example lower than expected revenue) rests at a local level and should be fully considered prior to implementation.
- 3.14 Officers are running calculations to estimate potential income in order to advise the Council, Sussex Police or Police and Crime Commissioner (PCC), if requested. The Council’s costs in administration should be recoverable. However, challenges include:
- Complexity and short term service pressure of setting up and collection.
 - Variable factors in predicting income (variations, exemptions, reductions).
 - Competing demands on limited funds: policing, taxi marshals, safe space, street pastors, cleansing.
 - Fairness: The Home Office said the levy would not target individual premises but is applicable over the licensing authority’s administrative area. The levy applies to the whole area of the authority. It cannot be imposed on part of the area only. The local Licensees Association and National Association of Licensed Multiple Retailers opines that LNL will not counter unmanaged home pre-loading and the off trade; possibly aggravating the phenomena. Other main issues include potential increase in antisocial behaviour, unfairness between licensees based on geography and divisive measures that reduce partnership spirit between the trade and responsible authorities. Legal challenge might reasonably be expected.
 - Police contribution is not hypothecated. PCC is under no obligation to reinvest police contribution in the area paying the LNL. The PCC policing strategy would determine resource allocation. The police are not statutorily required to apply the funds to the supply of policing during the late night supply period, or to provide extra policing during that period or to reinvest in the same geographical area as collection. The proportion of the net levy receipts are paid by the licensing authority to the local policing body determined by the licensing authority and must be at least 70% of the net levy receipts. There may be perception of injustice with suburban licensed premises subsidising

policing city centre problems or urban licensed trade subsidising rural Sussex policing strategy.

- 3.15 There is a complex consultation which would have to be followed prior to implementing a late night levy. The LNL does not apply to Temporary Event Notices (TENs), so some premises might take up their full TEN entitlements to avoid the levy. Currently within the cumulative impact area premises appear to heavily rely on TENs. There is concern that the temporary event notice provision and further deregulation measures in the current Home Office consultation are and may further be used to avoid the stricter licensing policies and controls. LNL also does not apply to entertainment or late night refreshment providers.
- 3.16 Some strategic considerations for the council are: economic effects of the levy on operators, on local economy and local employment; the existence of night safe and the BCRP for the reduction of crime and disorder and the cost of and effect on scheme for operators; the current alternative means of reducing crime and disorder (licensing policy, Operation Marble, etc.); fairness of passing the burden to operators rather than their being borne by the community at large; Police capacity to fund crime prevention and fairness of non-town centre operators funding town centre policing.
- 3.17 There are also wider policy considerations concerning the early morning restriction order provision. There are complex evidence requirements, administration and consultation; for instance a hearing would be necessary by Licensing Committee within 30 days of the 42 day consultation ending with a determination within 10 days, which may require full Council resolution. The days, area and periods to be determined along with representations for individual premises to be excluded as not contributing to nuisance or disorder will need considering and determining. Lack of exemption classes may cause calls for exclusions, such as casinos. Consultation analysis indicating an alternative EMRO may require repeating the entire procedure. Justification on proportionality grounds is necessary. So a hearing may cover socio-economic considerations for the city or restrict itself more narrowly to licensing objectives alone and potential legal challenge. Generally the licensing authority will need to balance community benefits.
- 3.18 Work of the Alcohol Programme Board, domain group 2 (availability). The Alcohol Programme Board has developed an action plan which can be found at appendix 5.
- 3.19 The Home office carried out an Alcohol Strategy consultation which sought views on five areas aimed at applying the national alcohol strategy and meeting the Red Tape Challenge to remove burdens from responsible businesses:
1. a ban on multi-buy promotions in shops and off-licences to reduce excessive alcohol consumption
 2. a review of the mandatory licensing conditions, to ensure that they are sufficiently targeting problems such as irresponsible promotions in pubs and clubs (the mandatory code - the conditions governing irresponsible promotions, dispensing alcohol directly into the mouth, provision of free tap water, age verification and small measures)

3. health as a new alcohol licensing objective for cumulative impacts so that licensing authorities can consider alcohol-related health harms when managing the problems relating to the number of premises in their area
4. cutting red tape for responsible businesses to reduce the burden of regulation while maintaining the integrity of the licensing system
5. minimum unit pricing, ensuring for the first time that alcohol can only be sold at a sensible and appropriate price

The Alcohol Programme Board's responses can be found at appendix 6.

3.20 **Deregulating regulated entertainment**

Cutting back red tape

The announcement follows the Department for Culture, Media and Sport consultation in late 2011 which looked at potential deregulation of Schedule 1 of the Licensing Act 2003. The consultation was the Government's response to calls to reduce unnecessary regulation arising from the Licensing Act 2003 for low risk activities.

Proposals include removing the requirement for premises licences, between 8am and 11pm for indoor sport activities for audiences of 1000 or less, plays and dance to audiences of 500 or less, and live and recorded music in alcohol licensed premises for audiences of 500 or less. The measures will also include plays, dance and indoor sport events taking place on community and Local Authority owned premises.

At the present time it is unclear in practice exactly how the changes will be implemented.

In light of these responses the Government now plans to De-regulate Entertainment beginning in April 2013:-

- Plays and the Performance of Dance will be deregulated for audiences of up to 500 between the hours of 08:00 to 23:00.
- Indoor sport will be deregulated for audiences of up to 1000 between 08:00 to 23:00.
- Live music. Live music is already partly deregulated under the Live Music Act since 1st October 2012, with live unamplified music in any location being permissible between 08:00 and 23:00 and live amplified music in on-licensed premises or workplaces for audiences of up to 200 between 08:00 to 23:00. The Government now proposes to raise the Live Music Act audience threshold for permitted music performance from 200 to 500 in on-licensed premises and workplaces.
- Recorded music will be treated in the same way as live music in on-licensed premises between 08:00 to 23:00 (i.e. with an audience limit of 500 and the prospect of a Review if noise nuisance is caused).
- Films will remain regulated, but the Government will consult in 2013 on proposals to examine the possibilities for safe community - focused screenings that maintain child protections.
- Plays, films, indoor sporting events, live and recorded music and performances

of dance, held on their own premises by Local Authorities, hospitals, nurseries and schools (except higher education) will be exempt between 0800 to 2300, with no audience limit.

- Similarly, live and recorded music held on premises owned by the above organisations will be exempt from licensing requirements for audiences up to 500 people.

- Community premises such as church and village halls and community centres will be exempt from licensing requirements for live and recorded music for audiences of up to 500 people.

- Circuses will be exempt from regulation for live and recorded music, plays, dance and indoor sport between 08:00 to 23:00 with no audience restrictions.

- Regulation will remain in place for all activities that exceed the audience limits and timings above. Boxing and wrestling will remain regulated, with the exception of the Olympic sports of Greco-Roman and Free style wrestling. Cage fighting/mixed martial arts will become regulated activities.

Please note that all deregulated entertainment has a cut off time of 23:00 hours.

There is no mention in the Consultation Response on the status of licence conditions for these soon to be deregulated activities.

The response can be found at

<http://www.culture.gov.uk/consultations/9650.aspx>.

4. COMMUNITY ENGAGEMENT AND CONSULTATION

4.1 Licensing Strategy Group, finance and legal services.

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: Jeff Coates

Date: 05/02/13

Legal Implications:

5.2 Legal implications are contained within the body of this report.

Lawyer Consulted: Rebecca Sidell

Date: 04/02/13

Equalities Implications:

5.3 There are no direct equalities implications.

Sustainability Implications:

- 5.4 There are no direct sustainability implications.

Crime & Disorder Implications:

- 5.5 There are no direct crime and disorder implications.

Risk and Opportunity Management Implications:

- 5.6 The proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with the licensing objectives are occurring after the grant or variation of a premises licence and so it is crucial for licensing authorities to execute this duty professionally. A significant proportion of city residents are employed in the licensed trade or in industries supporting it. There may be unforeseen socio-economic consequences of decisions affecting the local economy.

Public Health Implications:

- 5.7 The levy and EMROs may reduce the availability of alcohol which is a strand of the alcohol programme board's policy work.

Corporate / Citywide Implications:

- 5.8 The Licensing Act 2003 should provide a better system of regulation for businesses, greater choice for consumers and, where possible, help areas in need of economic regeneration. In the current economic climate, great care is necessary in terms of imposing taxes and regulatory delivery to ensure local business can be sustained and grow.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 None – for information only.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 For information only.

SUPPORTING DOCUMENTATION

Appendices:

1. Appendix 1 – Reviews 01.04.11 – to date
2. Appendix 2 – Appeals 01.04.11 – to date
3. Appendix 3 – Temporary Event Notices (TENs) 01.04.11 – to date
4. Appendix 4 – Licensing panels 01.04.11 – to date
5. Appendix 5 – Alcohol Programme Board action plan
6. Appendix 6 – Alcohol Strategy consultation response

Documents in Members' Rooms

1. None.

Background Documents

1. None.