

BRIGHTON & HOVE CITY COUNCIL

LICENSING COMMITTEE (LICENSING ACT 2003 FUNCTIONS)

3.30PM 20 NOVEMBER 2014

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillors Powell (Chair), Lepper (Opposition Spokesperson), Cobb, Gilbey, Hyde, A Kitcat, Kennedy, Marsh, Randall, Robins, Rufus, C Theobald and Wealls

Apologies: Councillors Bennett and Duncan

PART ONE

11 PROCEDURAL BUSINESS

11a Declaration of Substitutes

11.1 Councillor Randall declared that he was substituting for Councillor Jones and Councillor Wealls declared that he was substituting for Councillor Simson.

11b Declarations of Interest

11.2 There were none.

11c Exclusion of the Press and Public

11.3 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Committee considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I of the Act).

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

12 APPOINTMENT OF DEPUTY CHAIR

- 12.1 Nominations were requested to formally appoint a Deputy Chair for the remainder of the current municipal year. Councillor Ania Kitcat was nominated by Councillor Powell and this this was seconded by Councillor Rufus. A vote was taken and Councillor Kitcat was therefore duly appointed.
- 12.2 **RESOLVED** – That Councillor Ania Kitcat be duly appointed as Deputy Chair of the Non-Licensing Act 2003 Functions Committee for the remainder of 2014/15 Municipal Year.

13 MINUTES OF THE PREVIOUS MEETING

- 13.1 **RESOLVED** – That the minutes of the Licensing Committee (Licensing Act 2003 Functions) Meeting held on 26 June 2014 be agreed and signed as a correct record.

14 CHAIR'S COMMUNICATIONS

- 14.1 There were none.

15 PUBLIC INVOLVEMENT**15a Petitions**

- 15.1 There were none.

15b Written Questions

- 15.2 There were none.

15c Deputations

- 15.3 There were none.

16 ISSUES RAISED BY MEMBERS**16a Petitions**

- 16.1 There were none.

16b Written Questions

- 16.2 There were none.

16c Letters

- 16.3 There were none.

16d Notices of Motion

16.4 There were none.

17 REVIEW OF STATEMENT OF LICENSING POLICY

17.1 The Committee considered a report of the Director of Public Health in relation to the Council's statutory duty as Licensing Authority to review its Statement of Licensing Policy (SoLP) every five years. The previous review had been adopted on 15 December 2011 by Full Council and the revised Statement of Licensing Policy had come into effect on 20 December 2011.

17.2 It was explained that the revised statement of licensing policy (at that time) had included an expanded cumulative impact zone (CIZ) and a new larger special stress area (SSA). In addition, a matrix approach to licensing decision making was adopted. Further, it had been agreed that the cumulative impact zone and special stress areas would be reviewed regularly. As a result the available data had been reviewed year on year in relation to implementation of the CIZ and the SSA's.

17.3 At its meeting on 26 June 2014 the Committee had considered a report of the Health & Well Being Overview & Scrutiny Panel (Scrutiny Panel on Alcohol February 2014) in relation to proposed revision of the current Statement of Licensing Policy and had noted the recommendations arising from it. The Committee had noted the Panel's recognition of the strengths of the Statement of Licensing Policy and has agreed to authorise officers to carry forward their recommendation that the Policy and Matrix be reviewed by this Committee, in particular:

- a) the geographical scope of the Cumulative Impact Zone;
- b) that café bars are given their own categorisation in the Matrix to recognise that they are not restaurants or pubs and that different guidance may apply;
- c) review the definition of residential or commercial areas;
- d) review the statement on hours of alcohol sale; and
- e) review the policy on food and alcohol retailers outside the CIZ;
- f) gather and assess the evidence necessary for a review of the policy as above in particular the evidence for inclusion of further areas into the CIZ and that officers report back to this committee with a detailed report and amended policy proposal for approval by the committee with a view to commencement of the statutory consultation process

17.4 Officers had followed the Committees recommendations and the recommendations set out in the report had been formulated on the outcomes of that work. Inspector Simon Morgan was in attendance from the Police Licensing Unit and Caroline Palmer, Senior Public Health Community Safety Analyst was also in attendance.

17.5 It was explained that guidance stated that there should be an evidential basis for the decision to include a special policy within the Statement of Licensing Policy (SoLP). For instance, Crime and Disorder Reduction Partnerships may have collated information which demonstrates cumulative impact or Environmental Health Departments may be able to show concentrations of valid complaints relating to noise disturbance. The Licensing Authority should ensure that there was good evidence, not only that crime and

disorder or public nuisance were happening, but that they were caused by customers of licensed premises. The borders defined needed to identify the boundaries of the area where problems were occurring – not where they might occur at some time in the future, unless that was imminent.

- 17.6 Sussex Police had recommended that the CIZ and SSA were retained in their current form. This position was supported by the Council's Environmental Health Officers dealing with pollution, prevention and minimisation. Evidence had shown that the Special Policy had been successful as incidents of alcohol related crime and disorder and nuisance had decreased since 2011. Appendix C to the report set out the Review of Licensing in Brighton and Hove carried out by Sussex Police between – August 2013 to August 2014. Public Health and Community Safety Team analysis maps including mapping of licensed premises, alcohol related crime, noise and treatment centres had been reproduced as Appendix F to the report.
- 17.7 The Council's Environmental Health and Licensing section provides an advice and enforcement service in respect of noise nuisance from commercial premises and their report detailing noise issues arising in the city centre had been appended as Appendix D to the report.
- 17.8 The Head of Regulatory Services explained that the matrix approach provided a vision of what the licensing authority would like to see within its area and gave an indication of the likelihood of success or otherwise to investors and local businesses making applications. It was a mechanism for the locally accountable licensing authority to shape its local area and address public, social policy issues and, balanced the need for protection of local residents against the interests of the local economy, local employment and potential visitors. The matrix did not apply to existing premises just new/ variations. It provided a framework and it fell to each Panel to consider each application on its individual merits which would include the location and type of premises/activities. It was considered timely in the light of the recent review and feed back to recommend revisions to the existing matrix.
- 17.9 It was suggested that mixed commercial and residential categories be amended which would leave four categories instead: CIZ, SSA, Outside City Centre and Marina. It was considered that in concert with this it would be appropriate to expand the narrative/rationale for the matrix to ensure a more defensible robust approach, including exceptional circumstances and densely residential areas It was also proposed to remove the high Volume Vertical Drinking (super pub) category within the Matrix and to add a terminal time of 11pm for Members Clubs in the CIZ and to add Café Bars to the Matrix.
- 17.10 It was also suggested that paragraphs the SoLP as it was considered that as currently worded it was confusing. It was suggested that the reference to "times" in paragraphs 4.7 and 4.8 be removed.
- 17.11 In respect of off-licences there had been considerable success with the Sensible on Strength scheme where off licences signed up voluntarily not to sell cheap super strength beers and ciders. Positive feedback from alcohol treatment centres, where 80% of the high profile street drinkers had moved to lower ABV and more clients were engaging with rehab treatment centres, as well as breaking up hot spot drinking areas.

- 17.12 Councillor Wealls sought clarification that any changes made would only take effect in respect of new applications, citing the fact that there were a number of premises in his own Ward which were able to trade until a very late hour, he considered that if successive premises were unable to trade until a similar hour that could be open to challenge. The Head of Regulatory Services, Tim Nichols that all decisions could be subject to challenge although with the exception of premises situated within the CIZ, where the opposite was the case, there was a presumption that permission would be granted unless there were compelling reasons otherwise. The rationale for the Matrix approach was to seek to take a balanced fair approach, whereby any application would be considered on its individual merits whilst providing an indication for residents and the licensed trade as to what might be permitted, in certain areas of the city.
- 17.13 Councillor Wealls enquired regarding the feasibility of turning the whole city into a CIZ and the Head of Regulatory Service explained that this would be difficult to maintain, given that the CIZ in Brighton and Hove was already large, it would also be difficult to justify in terms of current evidence which suggested areas away from the city centre gave rise to fewer problems in terms both of numbers and scale of incidents. Caroline Palmer confirmed that this was borne out by the available data as did Inspector Morgan. Inspector Morgan also referred to "Operation Marble", the policing arrangements which operated in the City Centre every weekend and sought to ensure safe enjoyment of the city's night time economy.
- 17.14 Councillor Marsh commended the suggested revisions to the Matrix approach which she considered would be both clearer and would provide a robust and more defensible approach. She asked for clarification regarding the approach being taken with regard to the Marina and the Head of Regulatory Services explained that this area was becoming more active in terms of the night time economy. Whilst there was no desire to deter businesses, this was an area which needed to be kept under review.
- 17.15 Councillor Kennedy referred to the work that had been undertaken with street drinkers this represented an impressive body of work and had gone some way to addressing the issues associated with this problem, although it was recognised that this remained an on-going issue.
- 17.16 Councillor Robins acknowledged the work that had been undertaken but cited that problems still arose in that it appeared that the powers available in preventing licensed premises from opening appeared in some cases to be limited. The Head of Regulatory Services re-iterated that with the exception of premises located in the CIZ for applications to be refused it was necessary to evidence that one or more of the licensing objectives would be compromised. Although public health issues were not included directly within the Licensing objectives there was and continued to be increasing dialogue and collaborative work between the trade and other agencies "Sensible on Strength", being an example of this.
- 17.17 Councillor Rufus referred to the coloured maps and plans which had been provided to Members, whilst they were a useful tool they did not appear to compare like with like in every instance which could be mis-leading. In answer to questions by Councillor Rufus regarding "hot spot" areas of the city and whether incidents had increased in some

areas Superintendent Morgan explained that this was not the case, levels of reporting had increased and that was welcomed.

- 17.18 Councillor Gilbey also welcomed the proposed revisions to the matrix and sought confirmation regarding how areas would be defined in relation to ward boundaries.
- 17.19 Councillor Randall sought clarification regarding whether a licence applied to a person or to the premises, whilst welcoming the proposed changes which he considered were likely to be clearer for all and would be easier to apply.
- 17.20 Councillor Cobb referred to the licensing hours for public houses which fell outside the CIZ and the impact that this could have particularly at weekends. The Head of Regulatory Services explained that these issues would be addressed, if the existing arrangements were simplified it would be easier to defend decisions taken.
- 17.21 A vote was taken and the 9 Members who were present when the vote was taken voted unanimously that the recommendations set out below be agreed.
- 17.22 **RESOLVED** – (1) That Committee resolve to confirm the current Cumulative Impact Area (CIA) and Special Stress Area (SSA) as defined in the current SoLP and to continue to adopt the special policy in relation to that CIA and SSA and to continue to include these within the current statement of licensing policy;
- (2) Note the review of the matrix that had been carried out in accordance with the recommendations of *Scrutiny Panel on Alcohol (paragraph 1.5)*. *This new draft matrix is set out* in Appendix A to the report;
- (3) Officers to continue to carry out work to review the SoLP (set out in Appendix B) to the report, to incorporate emerging policy issues such as “Sensible on Strength” and off licences, and advice from Director of Public Health, Public Health England and the Local Government Association; and
- (4) Officers to report back to March 2015 Committee meeting with an updated draft SoLP for statutory and public consultation.

18 UNDERAGE GAMBLING TEST PURCHASE OPERATION

- 18.1 The Committee considered a report of the Director of Public Health detailing a recent underage gambling test purchase exercise by the Council’s Licensing Team and assisted by the Gambling Commission on the 9 October 2014. Following the report of the previous test purchase exercise presented at the June meeting of the Committee, officers had been instructed to continue to monitor premises and take appropriate enforcement action including test purchases. Previous failing businesses were retested. This report detailed the further monitoring which had taken place.
- 18.2 It was confirmed that following the initial failed purchases each premises had been sent a warning letter with details of the test purchase and the offence committed. The licence holder had been asked for a written response on how they will address the weaknesses in their underage gambling procedures shown by the test. They were also informed that Brighton and Hove Council intended to conduct a re-test of their gambling premises in

the future, and should that test again show weaknesses, consideration might be given to initiating a review of their premises licence. Written responses were received from all those premises that failed the test purchase acknowledging the failure and offence and committing to improve their policies and procedures.

- 18.3 A second test purchase operation had been carried out on 9 October 2014 by the Council's Licensing Team assisted by the Gambling Commission. A total of 5 premises were visited (1 Betting Shop, 1 Bingo and 3 AGCs). Bridge Bookmakers who had previously failed had notified officers of their closure so no re-test could take place. The operation involved three officers from the Local Authority and an officer from the Gambling Commission. A supervisor from the Licensing Team first entered the premises, to assess that the premises was safe to enter and machines were available for use, followed by the test purchaser entering. The test purchaser was a 16 year old boy and he was instructed to first walk around the premises then start playing a gaming machine (for 18 years persons only) for approx 7-10 mins.
- 18.4 Two of the premises failed the second test purchase by failing to challenge the young person. The three premises that passed had been written to informing them that they had passed the test purchase and that they needed to continue to monitor their policies and procedures for the prevention of underage gambling. The two premises that failed had been sent a letter informing them that they had failed the test purchase and that a review of their premises licence would be submitted by the Licensing Authority. Licence reviews of these premises would take place in the near future.
- 18.5 In answer to questions by Councillor Wealls it was confirmed that the test purchase operations had been carried out in accordance with recognised good practice within the industry and as operated by comparable local authorities. Councillor Wealls commended the work which had been undertaken.
- 18.6 **RESOLVED** – (1) That the Committee notes the contents of the report; and
(2) That officers continue to monitor premises and take appropriate enforcement action including test purchases.

19 SCHEDULE OF REVIEWS

- 19.1 The Committee considered a schedule prepared by the Director of Public Health setting out details of any reviews which had taken place since its last meeting.
- 19.2 **RESOLVED** – That the contents of the schedule be received and noted.

20 SCHEDULE OF APPEALS

- 20.1 The Committee considered the schedule prepared by the Head of Law containing details of any appeals lodged during the period since its last meeting.
- 20.2 **RESOLVED** – That the contents of the schedule be received and noted.

21 ITEMS TO GO FORWARD TO COUNCIL

21.1 There were none.

The meeting concluded at 6.10pm

Signed

Chairman

Dated this

day of