





**Brighton & Hove
City Council**

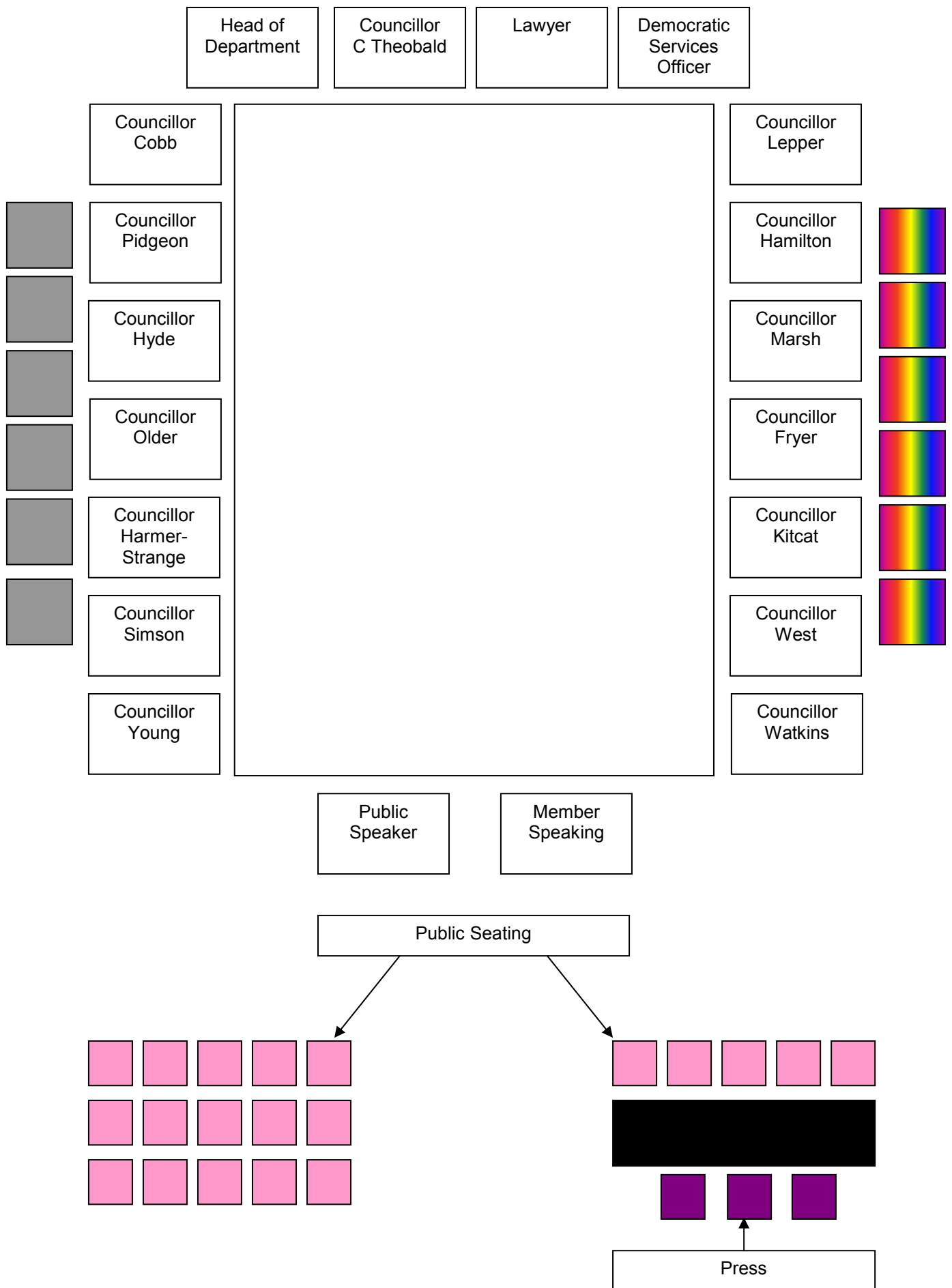
Licensing Committee

(Non-Licensing Act 2003 Functions)

Title:	Licensing Committee (Non Licensing Act 2003 Functions)
Date:	25 June 2009
Time:	3.00pm
Venue	Council Chamber, Hove Town Hall
Members:	Councillors: Mrs Cobb (Chairman), Lepper (Deputy Chairman), West, Harmer-Strange, Hawkes, Hyde, Kitcat, Marsh, Older, Pidgeon, Simson, C Theobald, Watkins, Wrighton and Young
Contact:	Jane Clarke Democratic Services Officer 01273 291064 jane.clarke@brighton-hove.gov.uk

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Democratic Services: Meeting Layout



AGENDA

1. PROCEDURAL BUSINESS

- (a) Declaration of Substitutes - Where Councillors are unable to attend a meeting, a substitute Member from the same Political Group may attend, speak and vote in their place for that meeting.
- (b) Declarations of Interest by all Members present of any personal interests in matters on the agenda, the nature of any interest and whether the Members regard the interest as prejudicial under the terms of the Code of Conduct.
- (c) Exclusion of Press and Public - To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

NOTE: Any item appearing in Part 2 of the Agenda states in its heading either that it is confidential or the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.

A list and description of the categories of exempt information is available for public inspection at Brighton and Hove Town Halls.

2. MINUTES OF THE PREVIOUS MEETING

1 - 12

Minutes of the meeting held on 24 April 2009 (copy attached).

3. CHAIRMAN'S COMMUNICATIONS

4. CALLOVER

NOTE: Public Questions will be reserved automatically.

5. PUBLIC QUESTIONS

(The closing date for receipt of public questions is 12 noon on Thursday 18 June 2009).

No questions have been received as of publication date.

6. LICENSING ENFORCEMENT POLICY

13 - 38

Report of the Director of Environment (copy attached).

Contact Officer: Tim Nichols

Tel: 29-2163

Ward Affected: All Wards;

7. DRIVER TRAINING

39 - 42

Report of the Director of Environment (copy attached).

Contact Officer: Martin Seymour Tel: 296659

Ward Affected: All Wards;

8. ITEMS TO GO FORWARD TO COUNCIL

To consider items to be submitted to the 16 July 2009 Council meeting for information.

In accordance with Procedural Rule 24.3a the Committee may determine that any item is to be included in its report to Council. In addition each Minority Group may specify one further item to be included by notifying the Chief Executive by 10.00am on 6 July 2009.

The City Council actively welcomes members of the public and the press to attend its meetings and holds as many of its meetings as possible in public. Provision is also made on the agendas for public questions to committees and details of how questions can be raised can be found on the website and/or on agendas for the meetings.

The closing date for receipt of public questions and deputations for the next meeting is 12 noon on the fifth working day before the meeting.

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Meeting papers can be provided, on request, in large print, in Braille, on audio tape or on disc, or translated into any other language as requested.

For further details and general enquiries about this meeting contact Jane Clarke, (01273 291064, email jane.clarke@brighton-hove.gov.uk) or email democratic.services@brighton-hove.gov.uk

Date of Publication - Wednesday, 17 June 2009

BRIGHTON & HOVE CITY COUNCIL

LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

3.00PM 24 APRIL 2009

COUNCIL CHAMBER, BRIGHTON TOWN HALL

MINUTES

Present: Councillors C Theobald (Chairman), Lepper (Deputy Chairman), Allen, Mrs Cobb, Fryer, Hamilton, Harmer-Strange, Hyde, Janio, Kitcat, Older, Pidgeon, Simson, Watkins and West

Apologies: Councillors Marsh and Young

PART ONE

27. PROCEDURAL BUSINESS

27A Declaration of Substitutes

27.1 Councillor Janio declared he was substituting for Councillor Young.

27.2 Councillor Allen declared he was substituting for Councillor Marsh.

27B Declarations of Interest

27.3 Councillor Watkins declared a personal and prejudicial interest in item 33 Improvements to Access on Public Highways as he would be sitting on an Overview & Scrutiny Panel that would be scrutinising this issue in the next few months.

27.4 Councillor Pidgeon declared a personal and prejudicial interest in item 33 Improvements to Access on Public Highways as he would be sitting on an Overview & Scrutiny Panel that would be scrutinising this issue in the next few months.

27C Exclusion of the Press and Public

27.5 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Licensing Committee (Non Licensing Act 2003 Functions) 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 100(1) of the Act).

27.6 **RESOLVED** – that the press and public be not excluded.

28. MINUTES OF THE PREVIOUS MEETING

28.1 **RESOLVED** – That the minutes of the previous meeting held on 5 February 2009 be approved and signed by the Chairman as a correct record.

29. CHAIRMAN'S COMMUNICATIONS

29.1 The Chairman updated the Committee that since the last Licensing Committee (Non Licensing Act 2003) Officers in the Hackney Carriage Office have suspended 2 drivers and revoked the licence of 1 driver. In addition to this 8 drivers were reminded of their licence conditions.

30. CALLOVER

30.1 **RESOLVED** – That all items on the agenda be reserved for discussion.

31. PUBLIC QUESTIONS

31.1 Mr Bennett asked the following question at the Committee meeting:

Churchill Square, Brighton is owned by Standard Life. No A Boards or other obstructions are permitted either in the covered area or the northern open area. CS is not a thoroughfare but a space given over completely to trade. This is flourishing. In great contrast, the City's pavements, which are thoroughfares owned and maintained from the public purse, are obstructed by traders private clutter. Why does the Council tolerate this invasion?

31.2 The Chairman responded with the following statement:

Thank you very much for your question Mr Bennett. As you say, Churchill Square is privately owned and so not subject to Highway's legislation. Churchill Square does occasionally permit a market on its forecourt and for instance, this week officers noted a Farmers Market operating there. I hope that my oral answer is sufficient. However, this matter is also dealt with in the published report later in the agenda under item 33.

31.3 Mr Bennett asked the following supplementary question:

The Committee are able to take this opportunity to get rid of A-Boards. There are many things on the public highway that are not licensed. Do Councillors realise the public good that will come of clearing the clutter here?

31.4 The Chairman responded with the following answer:

All options are open to Members of the Committee and are contained within the report. All views will be taken into account.

31.5 Mr Chavasse asked the following question at the Committee meeting:

The recommended 1.3m norm envisages retention of 1m, with escape provisions for immobile persons trapped by obstructions, but not the many dangers to the public. Best practice is the DfT guidance 2m norm. In our Western Road's Brunswick section 2m advantageously places all A Boards in private forecourts but, as officers know, neither 1.3 nor 1m is safe at bottleneck sites, including combinations of street furniture, active outdoor areas, trade displays and corners. Will the Committee please add a 2m norm and commission consultation to eliminate complicity in the licensing of unsafe, obstructing bottlenecks contemplated by lesser distances?

31.6 The Chairman responded with the following statement:

The deputation you made concerning obstructions of the pavement is included in the papers at item 32. A discussion of public pavement widths is detailed in the officers report item 33, which aims to balance the interests and improve access for all users of the highway, and I recommend that the matters you raise in both your question and deputation are dealt with in the members discussion in that report. I hope that my answer is sufficient.

31.7 Mr Chavasse asked the following supplementary question:

Will the Committee consider a 1m lower limit, particularly in regard to wheelie-bins?

31.8 The Chairman responded with the following answer:

This issue will be discussed in full under agenda item 33.

32. DEPUTATIONS

32.1 The Chairman reported that one deputation had been referred from Full Council on 19 March 2009. It concerned regulations covering 'A' Boards, display of goods and outdoor facilities on the highway.

32.2 The Chairman referred to the response she had provided at Full Council.

32.3 **RESOLVED** – That the deputation be noted.

33. IMPROVEMENTS TO ACCESS ON PUBLIC HIGHWAYS PAVEMENTS

33.1 The Committee received a report from the Director of Environment regarding Improvements to Access on Public Highway Pavements (Highway Licensing) (for a copy see minute book).

33.2 The Senior Highways Enforcement Officer, Mr Denyer, addressed the Committee and stated that the report set out certain measures to improve access to highways in the city. There were already regulations in place on this matter, and the report hoped to standardise the issue. He noted that applicants for A-Boards in the city would still have the right to appeal decisions made by Officers, but a greater clarity of regulation would help to streamline this process.

The Senior Highways Enforcement Officer noted that a number of representations had been received regarding the report, with many of direct relevance. A minimum two metre turning area had been suggested, and this was incorporated into the recommendations to Committee. Other suggestions included a limit to the number of boards placed outside each premises, and exceptions for conservation areas.

Many representations had asked for a minimum width of two meters for all highways in Brighton & Hove, but the Senior Highways Enforcement Officer stated that some of these propositions would have significant economic implications for traders, particularly in the present economic climate, which might be deemed to conflict with the council's policy to support local businesses. Other concerns in the representations related to, or would have an impact on, issues which fell outside the direct remit of the Licensing Committee. The Senior Highways Enforcement Officer added that Officers believed that these other propositions deserved to be fully examined in another more suitable forum, as part of a full and holistic strategic review of all highway placements, and not simply applied to those traders' items licensed under the Highways Act. He stated that the Committee might wish to recommend that this takes place.

- 33.3 Councillor Lepper asked how many traders had been subject to enforcement and the removal of their A-Boards, what the enforcement procedure and penalties were and whether traders in the city were aware of the need for a licence to display A-Boards. The Senior Highways Enforcement Officer stated that between 7 and 10 boards were currently in custody and enforcement was taken where possible. He stated that there was a need to be sure that the boards were causing an obstruction before action could be taken.

The process for enforcement was in three stages: advice to the traders regarding the obstruction; a warning; and finally action, which could result in prosecution if necessary. The Senior Highways Enforcement Officer also stated that a letter would be sent out over the next few weeks to traders in the primary licensing zone, to remind them of their obligations regarding A-boards. He stated that the department was changing the way they worked, and he hoped this would result in a more focussed approach from now on.

- 33.4 Councillor Simson asked what was included in the primary licensing zone and the Senior Highways Enforcement Officer stated that the area was encompassed by George Street, Hove, Brunswick and Adelaide to St James Street, West Street to Trafalgar Street and Rottingdean.
- 33.5 Councillor Simson asked why a city wide policy was not being suggested, and how many sites would not meet the 1.5 meter minimum standard suggested in the report. The Senior Highways Enforcement Officer stated that the original intent was to have a city-wide scheme but due to a lack of resources for policing and enforcing this issue, it was decided to focus the policy on those areas where the most complaints were received. The Senior Highways Enforcement Officer did not have exact figures regarding those roads that would be eliminated by a policy with 1.5 meters minimum standard, but noted that the main effects would be seen in the North Laine area. He stated that he could supply this information to the Committee at a later date.
- 33.6 Councillor Mrs Theobald asked what the effect of a 2 meter minimum width would be. The Senior Highways Enforcement Officer stated that this would effectively eliminate all

traders' placements in the North Laine and Lanes area and including other areas as well.

- 33.7 Councillor Kitcat asked what minimum standard was recommended in the report, whether the idea of having different widths for different areas had been looked into and why the full range of minimums from the DfT report had not been incorporated into the Officer's report.

The Senior Highways Enforcement Officer stated that a minimum turning width of 1.6 meters had been originally recommended, but the Federation of Disabled People had suggested a minimum of 2 meters in their representation, and this had been agreed to. He confirmed that different widths for different areas had been considered as an option, but felt this policy would be difficult to justify to traders on the most heavily restricted streets and would make it very difficult for the Council and other agencies to enforce effectively. He added that a range of DfT minimums had been taken from a different report to the one Councillor Kitcat referred to, which was why some were not included, but noted that the highest recommendations of 3.5 – 4.5 meters as a standard minimum width would in fact be wider than many highway footways in the city.

- 33.8 Councillor Fryer asked for an explanation of the option to restrict the number of A-boards per premises, and asked where the western boundary of the policy lay. The Senior Highways Enforcement Officer stated that Officers had looked at the planning limits on private land, which allowed a certain amount advertising space per premises (4.6 sq. metres). From this Officers had concluded that for the public highway, two boards would be an appropriate match for what was allowed on private land. If a limit of one licensed board per premises policy were applied, then this would only affect boards on the highway. A shop could therefore lawfully have one board on their own land and one on the highway. He added that the zone extended west to Brunswick and Adelaide, and the Committee could be provided with a map of the area if they wished.

- 33.9 Councillor Cobb asked whether a minimum width would apply to tables and chairs on the highway or just A-boards, and asked what was to stop traders from hanging signs over the highway if they could not place A-boards on it. The Senior Highways Enforcement Officer confirmed that a city-wide minimum width would apply to every type of obstruction on the highway, including tables and chairs and shop displays, and could not be used simply to prevent the use of A-boards. In his opinion a city-wide ban on A-boards alone might lie outside the remit of the Licensing Committee and would best be approached by means of a Bylaw. Further legal advice would be needed as to how this could be considered and decided upon by the Council. The Senior Highways Enforcement Officer stated that once signs are off the highway they are no longer the responsibility of the Highways Department and that he would support this kind of measure, but he assumed that planning permission would be needed to hang additional signage.

- 33.10 Councillor Cobb noted that many premises conducted the majority of their business on the highway, with tables and chairs placed outside. She asked how many would be affected by the policy. The Senior Highways Enforcement Officer stated that a 1.3 meter limit would affect some premises, but for the majority, a repositioning of their tables and chairs would suffice in meeting this limit. A 1.5 meter minimum would start affecting more traders detrimentally and a 2 meter minimum would exclude nearly all North Laine

traders from using the highway. The Senior Highways Enforcement Officer confirmed that a more detailed survey could be conducted if necessary.

- 33.11 Councillor Simson asked if there was a possibility of limiting the size of the A-boards and whether the Council had considered charging for these licenses based on size. The Senior Highways Enforcement Officer confirmed that a size limit was already part of the licence conditions. The option to charge for licences based on A-board size could be looked into and introduced if approved by the Council.
- 33.12 Councillor Older stated that many newsagents had several signs outside their premises to advertise different papers and news stories. She asked if these traders would not be limited to only one sign. The Senior Highways Enforcement Officer confirmed this would be the case, but noted that the policy did not affect boards on private land
- 33.13 Councillor Janio asked if any case studies of other Councils who had introduced a 1.3 meter minimum width had been looked into, and asked how soon the decision could be reviewed after the Committee meeting. The Senior Highways Enforcement Officer stated that East Sussex County Council had introduced a form of licensing for Brighton old town when they were responsible for highways in Brighton. In introducing the revised system under Brighton & Hove other Council's systems were looked at, but Brighton & Hove were actually one of the first authorities to set up a comprehensive highway licensing system of this nature.

The Senior Highways Enforcement Officer stated that since then, other authorities' methods were constantly looked at for new ideas and improvements, but it was largely the case that other councils looked to Brighton & Hove to see how its own policies and systems work, rather than the other way round. He gave the example of West Sussex County Council, who were currently experimenting with a system based upon the Brighton & Hove model.

The Senior Highways Enforcement Officer noted that the new policy guidelines struck a fine balance between traders' economic concerns and safety concerns, and felt that a 1.3 meter limit was the right balance. The Head of Network Management added that a 1.2 meter limit was outlined in DfT guidelines, and the department had used this as a basis and added 0.1 meters.

- 33.14 Councillor Lepper was pleased to note that Overview & Scrutiny were looking into this issue and felt it would make more sense to wait until the results of this review had been completed. She felt that 1.3 meters was a very narrow strip for people with disabilities to access and this was a wide-spread problem within the city, but agreed that a policy was needed to ensure that the regulations could be enforced properly. She proposed a deferral of the decision pending the outcome of the scrutiny review.
- 33.15 Councillor Hamilton disagreed with the proposal and stated that the correct forum for making the decision was the Licensing Committee. He felt that the concerns of the street traders also needed to be taken into account when making the decision.
- 33.16 Councillor Simson agreed she had thought about deferring the decision, but believed this process would take too long and the current policy needed to be improved as soon

as possible. She suggested an amendment to the decision to allow only one A-board per premises.

- 33.17 Councillor Kitcat stated that applying one limit to the entire city was not appropriate in this circumstance and noted that traders in the old town had no access to passing trade, and relied on A-boards to advertise their business to customers passing on adjacent streets. The policy and amendment as proposed would restrict these traders to advertising at only one end of their street. Councillor Kitcat felt that these local businesses added to the general ambience of Brighton, but recognised the concerns over access to highways for people with disabilities. He agreed that the best place to examine these issues was a full scrutiny review and felt the decision should not be rushed into. He stated that Officers already had delegated powers to operate the current scheme and so the situation would not be made worse by deferring the decision pending a scrutiny review.
- 33.18 The Senior Highways Enforcement Officer stated that although Officers did have delegated powers to make decisions on this issue, applicants still had a right of appeal, and there were currently no guidelines for an appeal panel to refer to.
- 33.19 Councillor Kitcat asked if the appeal panel would be able to ignore guidelines set by the Licensing Committee if the scrutiny review came to a different recommendation. The Senior Highways Enforcement Officer stated that each appeal case was taken on its merits, and the intentions of Members would of course be taken into account when assessing whether an A-board was appropriate or not.
- 33.20 Councillor Janio stated that the decision needed to be made at the Licensing Committee, and this would enable the relevant Overview & Scrutiny Committee to assess the effects of the policy.
- 33.21 Councillor Fryer asked what percentage of business owned private land in the central licensing zone. The Senior Highways Enforcement Officer stated that approximately 53% on Western Road, Hove and 40% on St James' Street. There was a perception that a large amount of signage was situated on the highway in other parts of town, but these were in fact on private land.
- 33.22 Councillor Fryer stated she would support deferral of the decision and felt that an Overview & Scrutiny Panel would be able to consider the issue from a blank starting point.
- 33.23 Councillor Hamilton asked if Members had any input in the appeals process, and whether they could write a representation in support of an applicant. The Senior Highways Enforcement Officer stated that it was possible for Ward Councillors to personally represent the applicant during the appeal process, but noted that under the Highways Act, unlike under other licensing legislation, it was normally only applicants, relevant frontagers and those materially affected by a placement who could make direct representations to Committee. An individual Councillor might not necessarily be personally and directly affected by a licence. In such cases the Member might not have a right to make a representation regarding a licence application to Committee. A Councillor would have a right to make a representation on their own behalf if personally materially affected by the licence, or if a relevant frontager. He noted however that

Officer Reports to Committee would include mention of all relevant representations received.

- 33.24 Councillor Hamilton asked if a member of the Licensing Committee could make a representation at an appeals hearing and the Solicitor to the Committee stated that this might be possible, but would be taken on a case by case basis.
- 33.25 Councillor West felt this was a serious issue and affected people's ability to navigate the highway effectively. He did not think the Committee should be forced into a decision for the sake of good governance and that it should be deferred until it had been scrutinised properly.
- 33.26 The Head of Environmental Health and Licensing stated that if the Committee took the decision to defer, they would be deferring to another Licensing Committee meeting. He noted that the Council was not in a strong position given there was no approved policy, and felt the authority could be challenged successfully. He also noted that applicants were unsure of the regulations regarding highways as there was no guidance currently published for this. He stated that it was the function of the Licensing Committee to set policy in this area, but noted that any decisions could be reviewed by other forums should the need arise.
- 33.27 Councillor Kitcat asked if there was a previous policy on this issue and the Head of Network Management stated that there was an old East Sussex County Council policy in existence, but that it was not specific enough.
- 33.28 Councillor Kitcat asked if Officers considered the Council's position to be weak because of the lack of measurements in the current policy or because no guidance had been produced by the Council. The Head of Environmental Health and Licensing stated that the Council needed to show consistency and reasonableness in decision making, and therefore an up-to-date policy was needed.
- 33.29 A vote was taken, but failed, on the motion to defer the decision, as proposed by Councillor Lepper and seconded by Councillor Kitcat.
- 33.30 A second vote was taken, and agreed, on the motion to amend the recommendation to include a limit on A-boards to one per premises, as proposed by Councillor Simson and seconded by Councillor Fryer.
- 33.31 A third vote was taken, and agreed, on an amendment to the recommendation to allow special consideration for premises situated in twittens and alleyways regarding this policy, as proposed by Councillor Kitcat and seconded by Councillor West.
- 33.32 **RESOLVED** – That the Committee agrees the following policy in relation to traders' items placed upon the public highway:
1. That no licensed traders' items should be permitted to reduce the width of a footway to less than 1.3 meters except where:
 - a) A formal pedestrian zone has been established in a road by Traffic Order and the whole of the carriageway is kept clear for pedestrian use;

- b) A road is closed to vehicular traffic by virtue of a temporary Traffic Order and the whole of the carriageway is kept clear for pedestrian use;
 - c) A road is considered to be shared space and the whole carriageway is generally available for pedestrian use.
2. That where a footway is reduced to a width of 1.3 meters (or less) by objects (whether these objects be traders' items of fixed street furniture such as lamp posts, bins etc.) 'turning areas' for manual wheelchair users and guide dogs must be established at regular intervals. These turning areas shall not be less than two meters in length and shall be the full width of the footway. Such areas must be maintained at intervals of no more than six meters along the length of any restricted footway.
 3. That, except in the case of items within large, waiter-serviced sitting-out areas, no traders' item shall be permitted to be placed more than 5 meters from the licensed premises. All objects must be within sight from a window or door of said premises or in clear visual range of CCTV camera(s) monitored from within the licensed premises. This provision will mainly affect advertising boards.
 4. That where an application is refused by Officers, an applicant may appeal to the Licensing Sub-Committee (the Licensing Panel).
 5. That applications for A-Boards shall be restricted to 1 per premises (excluding those situated on private land), but that:
 - a) Special consideration will be given to those premises situated in twittens and alleyways regarding this policy.

34. STREET TRADING - DESIGNATION OF STREETS

- 34.1 The Committee considered a report from the Assistant Director of Public Safety regarding Street Trading – Designation of Streets (for a copy see minute book).
- 34.2 The Licensing Manager addressed the Committee and stated that the report set out proposals for the designation of streets and that Officers were requesting that further consultation take place with traders regarding this issue.
- 34.3 Councillor Hamilton asked for clarification on which streets in Portslade were included and the Head of Environmental Health and Licensing stated that the area was split into north and south. The streets in the south were generally prohibited streets, except for those listed at appendix 1 of the report. The streets in the north were generally allowed, except for those streets listed in appendix 1 of the report.
- 34.4 Councillor Kitcat asked the Officers to present this information in a clearer way when consulting the public on this issue and the Head of Environmental Health and Licensing agreed to this.

34.5 Councillor Lepper noted that there was confusion about what a street trader was and how they differed to peddlers and those offering services. She asked for this to be made clear as part of the consultation. The Head of Environmental Health and Licensing agreed that this was a difficult area to explain because of the high number of exemptions that applied to street traders. He noted that a strict regime was unnecessary, but stated that a private Bill was going to parliament regarding the removal of peddler exemptions, and would include allowing Councils the power to seize goods. The Committee could offer their support to this Bill, if they so wished. The Head of Environmental Health and Licensing added that a report had been submitted to Committee on 27 November 2008 and had described the numerous exemptions to this policy.

34.6 **RESOLVED** – That the Committee agrees the following in relation to Street Trading – Designation of Streets:

1. That the Committee authorises Officers to publish Notice of Intention to designate streets as set out in appendix 1.
2. That the Committee authorises Officers to serve a copy of Notice on the Chief Officer of Police and the Highways Authority.
3. That the Committee authorises Officers to consult further with existing street traders.

35. STREET TRADING POLICY

35.1 The Committee considered a report of the Assistant Director of Public Safety regarding the Street Trading Policy (for a copy see minute book).

35.2 The Licensing Manager summarised the report and stated that the added conditions would make the existing policy more transparent and enforceable. Relevant interested parties were consulted on 27 November 2008 and representations had been received from Dorothy Stringer school. She stated that the curtilage of schools had been exempt from the policy in June 2004, and that Officers were requesting permission from the Committee to fully consult on the proposals.

35.3 Councillor Kitcat stated that he was concerned about approving permission for consultation as this would indicate to residents that the consultation responses could influence future policy. He did not feel that consultation responses were always considered properly, and did not want to raise the expectations of residents and interested parties. He asked what influence the proposed consultation would have on policy.

35.4 The Head of Environmental Health and Licensing recognised that a key lesson learnt from previous consultation exercises was that the responses sometimes raised radical options, which had not been considered as proposals under the initial consultation. If the authority implemented these radical options they would be exposed to allegations of unfairness, as many interested parties would not have had the opportunity to comment on the amendments. Therefore a second consultation exercise needed to be conducted

on amended proposals, and limits set, which would give everyone the opportunity to comment fairly.

The Head of Environmental Health and Licensing went on to say that creating a healthy eating zone around schools, as proposed by the Education Department in the initial consultation, would be difficult as street trading policy was not intended as a tool to encourage healthy eating decisions. He stated that the Council ran a Healthy Awards Scheme that the Licensing Team were promoting to address this problem.

35.5 Councillor West asked for the recommendation contained within 2.2 of the report to be worded more accurately, and Councillor Simson proposed an amendment to the recommendation.

35.6 **RESOLVED** – That the Committee agrees the following in relation to the Street Trading Policy:

1. That the Committee supports the street trading policy as set out in appendix 1 of the report (for copy see minute book).
2. That Members agree to consult on a standard street trading condition that would be imposed to exclude traders 25 meters from school curtilages.
3. That the Committee authorises Officers to consult further with existing street traders and Officers engage with street traders concerning the Council's Healthy Choice Award Scheme.

36. ITEMS TO GO FORWARD TO COUNCIL

36.1 There were none.

The meeting concluded at 4.55pm

Signed

Chairman

Dated this

day of

Subject: *Licensing Enforcement Policy*
Date of Meeting: **25 June 2009**
Report of: *Director of Environment*
Contact Officer: Name: **Tim Nichols** Tel: **29-2163**
E-mail: tim.nichols@brighton-hove.gov.uk
Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 On 5th February 2009, the committee approved a draft Licensing Enforcement Policy for consultation.
- 1.2 On 27th November 2008, the committee approved Home Office and Department of Culture, Media and Sport document entitled "Problem Premises on Probation". This government advice proposed tough conditions to be assembled in packages for premises causing difficulties in communities.

2. RECOMMENDATIONS:

- 2.1 That the committee adopts the licensing enforcement policy appended in appendix A.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The licensing enforcement policy is consistent with the corporate enforcement policy and principals of good regulation: proportionality, accountability, consistency, transparency and targeting.
- 3.2 Other government advice such as the Regulators Compliance Code, Cabinet Office Enforcement Concordat, the Hampton Review and the Macrory report all inform this report.

4. CONSULTATION:

- 4.1 The draft policy has been considered by the Licensing Strategy Group, including Sussex Police, East Fire and Rescue Service, the licensed trade, businesses associations, residents and their associations, council enforcement officers such as trading standards and environmental health. It has also been considered by

the taxi trade by way of its consultative forum. Brighton & Hove Business Forum and the public at large via the website have also been consulted.

- 4.2 The council's legal officers have made some improvements to ensure clarity and these are incorporated in the report appended.
- 4.3 The Community Safety Partnership commented as follows: There is a need to ensure safeguarding children provisions are properly recognised, for instance, supervision of children by adults in licensed premises and exposure of children to drunken or violent behaviour. It is felt that this is covered by offences created in the act and accommodated by the proposed enforcement policy. Concern was raised about employment of young adults in the licensed trade, however, it would be unlawful to exclude a type of employment to students etc.
- 4.4 One local licensed business responded. The correspondent considered the policy appropriate and encouraging within the context of the current economic climate although some of the sanctions were considered draconian. The correspondent supported the principals of good regulation and recognised that even aiming for a consistent approach, interpretation of guidelines can result in differing outcomes. There was no complaint about the fairness of the council's licensing officers although in some time past, it was felt some over-zealousness may have been experienced. The importance of adhering to the Hampton Principals of better regulation was supported. The severity of the Home Office's proposed package of measures to punish offenders was questioned as some pubs have a particularly challenging time after change of ownership if they have inherited a poor reputation. However, it is felt that by dealing with applications on their individual merit, this fear can be ameliorated.
- 4.5 The St. James' Street Area Action Group made a submission (appended). Responsible authorities share intelligence in order to target those licensed premises causing problems, for instance, test purchases for age-restricted sales, and where there are complaints about sale of alcohol to inebriated people. The cumulative impact area covers this group's area.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

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: Karen Brookshaw Date: 18/05/09

5.2 Legal Implications:

Policy will assist the Council in meeting its duty under section 6 of the Human Rights Act 1988 not to act in a way which is incompatible with a Convention Right.

Lawyer Consulted: Rebecca Sidell

Date: 01/06/09

5.3 Equalities Implications:

An equality impact assessment concludes a policy should promote action that is transparent, consistent, proportionate and fair.

5.4 Sustainability Implications:

None.

5.5 Crime & Disorder Implications:

The policy requires officers to consider targeted and proportionate action against those that persistently breach the legislation so should assist in the prevention of crime and disorder.

5.6 Risk and Opportunity Management Implications:

None.

5.7 Corporate / Citywide Implications:

Good regulation promotes economic success and prosperity.

SUPPORTING DOCUMENTATION

Appendices:

- A. Licensing enforcement policy.
- B. Lead agency status.
- C. St. James' Street Area Action Group submission.

Documents In Members' Rooms:

- 1. None.

Background Documents:

- 1. The Regulators Compliance Code.
- 2. Cabinet Office Enforcement Concordat.
- 3. Hampton Review.
- 4. Macrory Report (Penalties & Sanctions).

LICENSING ENFORCEMENT POLICY

1.0 STATEMENT OF OBJECTIVES

- 1.1 The Environmental Health & Licensing service is committed to the Council's core priorities. This policy gives detail on how the Council's priorities:

Protect the environment while growing the economy;
better use of public money;
reduce inequality by increasing opportunity;
fair enforcement of the law;
open and effective leadership.

and will inform the enforcement actions taken. Amendments to prioritise will be embedded automatically.

- 1.2 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 Regulator's Compliance Code.
- 1.3 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.
- 1.4 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.

- 1.5 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 co-ordinating 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 on 2008. The current version is appended (appendix A).

10. 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 B).

“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 an interested party 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:
 - a. Removal of the designated premises supervisor and his/her replacement (the manager is removed);
 - b. Suspension of the licence for between 1 day and 3 months according to the circumstances.
 - c. Restriction on trading hours – cutting hours of trading in alcohol.

- d. 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 A: 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.

TRAINING

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

9. 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.
10. No alcohol sales – Friday to Sunday. Impact on all four licensing objectives.

ALCOHOL DISPLAYS

11. No displays of alcohol or advertising of alcohol promotions that can be seen from outside the premises.
12. No alcohol stocks promoted alongside goods likely to appeal to children (e.g. confectionary, toys).

CUTTING DOWN ON SHOPLIFTING

13. SIA registered security staff to be present at alcohol aisles during opening times to prevent attempted under age sales or theft.
14. Location of alcohol stocks/displays not to be sited near the entrance/exit to deter shoplifting.
15. No direct public access to alcohol products – like tobacco, alcohol to be kept behind a dedicated kiosk.

NAMING AND SHAMING

16. 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

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

18. 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.
19. 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.
20. 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.
21. 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.

Appendix B

LEAD AGENCY STATUS

Offence / Issue	Police	Local / Licensing Auth	Fire & Rescue	Trading Standards
<u>Licensing Objective 1:</u> Crime and Disorder				
Offences of failing to notify changes in details <i>Section 33(6) Licensing Act 2003</i>		Lead		
Offences of failing to display licences or certificates <i>Section 57(4) Licensing Act 2003</i>		Lead		
Unauthorised use of premises for licensed activities <i>Section 136 Licensing Act 2003</i>		Lead		
Exposing alcohol for unauthorised sale <i>Section 137 Licensing Act 2003</i>	Shared Lead	Shared Lead		
Keeping alcohol on premises for unauthorised sale <i>Section 138 Licensing Act 2003</i>	Shared Lead	Shared Lead		
Allowing Disorderly Conduct on Licensed Premises <i>Section 140 Licensing Act 2003</i>	Lead			
Obtaining/supplying alcohol to drunk <i>Sections 141 / 142 Licensing Act 2003</i>	Lead			
Drunkenness in Premises <i>Section 143 Licensing Act 2003</i>	Lead			

Offence / Issue	Police	Local / Licensing Auth	Fire & Rescue	Trading Standards
Keeping of smuggled goods <i>Section 144 Licensing Act 2003</i>	HMC&E	HMC&E		
False statements made for purposes of the Act <i>Section 158 Licensing Act 2003</i>		Lead		
Enforcement of closure order <i>Section 169 Licensing Act 2003</i>	Lead			
Prohibition of alcohol sales at service / garage areas <i>Section 176 Licensing Act 2003</i>	Shared Lead	Shared Lead		
Public Drunkenness <i>Section 12 Licensing Act 1872</i>	Lead			
Underage drinking <i>Section 169 Licensing Act 1964</i>	Shared Lead			Shared Lead
Misuse of Drugs <i>Section 4 Misuse of Drugs Act 1971</i>	Lead			
Anti Social Behaviour <i>Section 1 Crime & Disorder Act 1998 (ASBO)</i>	Shared Lead	Shared Lead		
Acceptance of accredited proof of age cards		Lead		
Provision of effective CCTV in and around premises		Lead		
Employment of SIA licensed door staff	Shared Lead	Shared Lead		
Requirements to provide toughened or plastic glasses		Lead		
Provision of secure deposit boxes for confiscated items (sin bins)	Shared Lead	Shared Lead		
Provision of litterbins, other security measures such as lighting		Lead		

<u>Licensing Objective 2:</u> Public Safety:	Police	Local / Licensing Auth	Fire & Rescue	Trading Standards
Sales of alcohol on vehicles <i>Section 156 Licensing Act 2003</i>	Lead			
Overcrowding of premises		Shared Lead	Shared Lead	
Use of special effects such as lasers, pyrotechnics, smoke machines and foam		Shared Lead	Shared Lead	
Blocked or locked means of escape		Shared Lead	Shared Lead	
Provision of sufficient number of people employed to secure safety of patrons		Lead		
Regular testing and certification of systems and appliances		Shared Lead	Shared Lead	
Offence / Issue	Police	Local / Licensing Auth	Fire & Rescue	Trading Standards
<u>Licensing Objective 3:</u> Public Nuisance:				
Public nuisance from noise		Lead		
Public nuisance from litter		Lead		
Public nuisance from persons leaving the premises	Shared Lead	Shared Lead		
Public nuisance from odour		Lead		
Effective public transport		Lead		
Adequate public lighting/security lighting		Lead		

<u>Licensing Objective 4:</u> Protection of Children from harm:	Police	Local / Licensing Auth	Fire & Rescue	Trading Standards
Exposure to explicit films/plays <i>Sections 74 & 76 Licensing Act 2003</i>		Lead		
Requirements for children to be accompanied by an adult <i>Section 145 Licensing Act 2003</i>		Lead		
Sale of Alcohol to Children <i>Section 146 Licensing Act 2003</i>				Lead
Sale of liqueur confectionery to children under 16 years <i>Section 148 Licensing Act 2003</i>	Lead			
Purchase, acquisition or consumption of alcohol by or for children <i>Sections 149 & 150 Licensing Act 2003</i>	Lead			
Delivering to or sending a child to obtain alcohol <i>Sections 151 & 152 Licensing Act 2003</i>	Lead			
Unsupervised sales by children <i>Section 153 Licensing Act 2003</i>	Lead			
Confiscation of sealed containers of alcohol and unsealed <i>Confiscation of Alcohol (Young Persons) Act 1997)</i>	Lead			
Provision of sufficient number of staff to secure protection of children from harm <i>Section 12(1) Children and Young Persons Act 1933</i>		Lead		

Offence / Issue	Police	Local / Licensing Auth	Fire & Rescue	Trading Standards
Concerns of moral/psychological harm		Lead		
Concerns over physical harm	Shared Lead	Shared Lead		
Exposure to drugs, dealing or taking	Lead			
Exposure to gambling	Shared Lead	Shared Lead		
Exposure to activities of adult/sexual nature	Shared Lead	Shared Lead		
Exposure to incidents of violence/disorder	Lead			
Exposure to environmental pollution such as noise or smoke		Lead (with HSE)		
Exposure to special hazards i.e. suitability of the premises		Lead		
Limitation on hours when children may be present on all or parts of premises	Shared Lead	Shared Lead		
Exclusions by age when certain activities are taking place		Lead		

St James's Street Area Action Group

To Licensing Strategy Group B&HCC
From Trevor N Scoble Authorised Agent for SJSAAAG Dated 29.05.09

LICENSING ENFORCEMENT POLICY

STATEMENT OF OBJECTIVES

Under statement of objectives we would like the Council to include for the residents and local businesses the following;

Protection of residents and local business against the environmental impact of Licensed Premises on their Lives & businesses (24 hours 365/6 day a year)

Under Section 17 of the Crime & Disorder Act 1998
Human Rights Act 1998
UK & European Environmental Law

Reasons in support

It is just not the perception but now a matter of fact that many local residents and business people no longer feel safe to walk our local shopping street and residential side streets, day and night and to go about their any normal activities particular around the Pubs, Bars, Night Clubs when returning home from visiting friends & relations Shops, Theatres, Cinemas, Restaurants or any other normal life activities.

Business feel at risk when delivering goods and opening up first thing in the morning and through out the day because of the high number of drunks and street drinkers coming into their premises.

It is now a major problem of the environmental impact on the lives and homes of local residents of the many Licensed Premises not just during the Day but throughout each and every night of the year insofar as to the high levels of noise and disturbance, foul language and the resultant urine, vomit, defecation, chewing gum, broken glass and fag ends left on our front door steps and residential side streets.

Under item 1.5 Risk Assessment

We would ask B&HCC to carry out a Risk Assessment in our area as it is has the highest residential density in the City but out numbered by the resultant occupancy of Licensed Premises and facilities

We would also like proactive Policing of the Off sales of Alcohol reviewing of premises cctv and street cctv to pursue both offenders shop keepers and street drinkers. Protection of Children should be looked at as they are with drinking Guardians in our Local Parks.

Signed. Trevor N. Scoble for & on behalf of SJSAAAG.

Subject: *Driver Training*
Date of Meeting: **25 June 2009**
Report of: *Director of Environment*
Contact Officer: Name: **Martin Seymour** Tel: **29-6659**
E-mail: martin.seymour@brighton-hove.gov.uk
Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 All new hackney carriage / private hire drivers are required to undertake training (see 3.2 below). Officers have identified a Level 2 BTEC Award in Transporting Passengers by Taxi and Private Hire which would provide accredited training and a recognised qualification for drivers.

2. RECOMMENDATIONS:

- 2.1 All prospective hackney carriage/ private hire driver applicants shall be required to hold Level 2 BTEC Award in Transporting Passengers by Taxi and Private Hire before licensing, from a date agreed by the Director of Environment.
- 2.2 That the power to approve the training provider is delegated to the Director of Environment.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 Under sections 51 & 59 of the Local Government (Miscellaneous Provisions) Act 1976 licensing authorities are required to ensure that persons issued licences are "fit & proper".
- 3.2 In ensuring the fitness of persons applying for an initial new hackney / private hire drivers licences the authority requires that they undertake:
- a) A medical examination.
 - b) A CRB criminal background check.
 - c) A Driving Standards Agency taxi driving test.
 - d) A two part oral street knowledge test.
 - e) A practical route test.
 - f) Attend Equalities and Disabilities Awareness Training.
 - g) Attend Customer Care Training.

- h) Meet a required level of literacy set by the council.
- 3.3 Currently all new drivers must attend Equalities and Disabilities training provided by The Council which has been introduced following recommendations from the Social Justice Consultation Forum (ESJCF). The course involves prospective drivers knowing how to interact with people with disabilities, including helping them in and out of wheelchair accessible taxis. Ethnic minority awareness is intended to promote racial harmony and equality. New drivers are also required to attend a Customer Care Course provided by the council which not only gives drivers the level of customer service expected of them but also how to keep themselves safe while working in a possibly dangerous environment. Adult Skills and Learning also assess driver's literacy at the customer care course and provide assistance in reaching the required level of literacy if required.
- 3.4 The Level 2 BTEC Award Transporting Passengers by Hackney Carriage & Private Hire is designed to support and enhance the knowledge of existing or prospective drivers who wish to develop or begin a career in transporting passengers. It will provide career opportunities for persons seeking a career in driving a passenger transport vehicle, employed passenger transport drivers who will undertake this qualification as part of their continuing professional development and existing passenger transport drivers who wish to return to the industry after an absence and require their qualifications to be updated.
- 3.5 The Level 2 BTEC Award has been developed to provide a consistent standard across the whole Taxi industry and provide hackney carriage and private hire drivers with a meaningful and professional qualification.
- 3.6 The BTEC course is a Vocational Related Qualification based on a knowledge-based programme assessed by a multiple-choice test within each of the modules. It is comprised of seven modules which are:
- Customer Service for Passenger Transport
 - Equality & Diversity in Passenger Transport
 - Passenger Transport & Disability Awareness
 - Transporting Passengers Safely
 - Carriage of Luggage and Parcels by Taxi & Private Hire
 - Map Reading & Route Planning
 - Taxi & Private Hire Regulations (UK)
- 3.7 The award is delivered in a way that suits the individual and will consist of classroom teaching, open learning and distance learning or a combination of these. These would replace the courses & literacy assessments provided by the council.
- 3.8 An NVQ in Road Passenger Vehicle Driving is also available to existing drivers on a voluntary basis.

3.9 The BTEC and the NVQ courses are currently available at no cost to applicants through government funding. The rules on this funding have recently relaxed and allow applicants to apply for training even if they have received funding in other vocational fields. Most providers are able to fund a percentage of applicants that are not able to access government funding for whatever reason.

4. CONSULTATION:

4.1 This matter has been discussed at the council's hackney carriage and private hire consultation forum where all members of that forum are free to express their opinions. Forum members are all supportive of these requirements for new applicants.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

There are no financial implications for the council from endorsing the Level 2 BTEC Award since the courses are funded by government.

Finance Officer Consulted: Karen Brookshaw

Date: 15/05/09

5.2 Legal Implications:

Section 47 of the Local Authority (Miscellaneous Provisions) Act 1976 gives the council a discretionary power to attach to the grant of a licence of a hackney carriage such conditions as it considers reasonably necessary. Any person aggrieved by any conditions attached to such a licence may appeal to a magistrates court.

Lawyer Consulted: Rebecca Sidell

Date: 01/06/09

5.3 Equalities Implications:

As a service provider, the council provides high quality services to meet diverse needs of Brighton and Hove residents. Equally accessible to all, it also uses its influence with partners to further the principals beyond its own operation.

5.4 Sustainability Implications:

The role of the taxi trade is included in the Local Transport Plan, which identifies it as a key element in providing sustainable transport choices. It creates important links in the transport network to other forms of sustainable transport providing a seamless connection. It will contribute to three of the government's four shared transport priorities – reducing congestion, improving air quality and accessibility. Use of taxis for school transport, licensed vehicles using bus lanes, locating ranks at railway stations and the city coach station, approved use of liquid petroleum gas all contribute to reducing congestion and moving passengers quickly.

5.5 Crime & Disorder Implications:

Sufficient late night transport to reduce public place violent crime is recognised in the community safety, crime reduction and drugs strategy. The presence of CCTV can be an important means of deterring and detecting crime.

5.6 Risk and Opportunity Management Implications:

Having well trained, professional drivers protects the council and the city's reputation and the visitor economy.

5.7 Corporate / Citywide Implications:

Tourism needs to provide a warm welcome to visitors and the tourism strategy depends upon effective partnership with transport operators particularly to achieve safe late night dispersal for the nighttime economy.

SUPPORTING DOCUMENTATION

Appendices:

None.

Documents In Members' Rooms:

None.

Background Documents:

None.