

BRIGHTON & HOVE CITY COUNCIL

LICENSING COMMITTEE (LICENSING ACT 2003 FUNCTIONS)

3.15PM 3 MARCH 2016

FRIENDS MEETING HOUSE, SHIP STREET, BRIGHTON BN1 1AF

MINUTES

Present: Councillors Marsh (Chair), Horan (Deputy Chair), Cobb (Opposition Spokesperson), Deane (Group Spokesperson), Allen, Bell, Inkpin-Leissner, Lewry, Moonan, O'Quinn, Page, Simson, C Theobald, Wares and West

PART ONE

22 PROCEDURAL BUSINESS

22a Declaration of Substitutes

22.1 Councillor Inkpin-Leissner declared that he was substituting for Councillor Gilbey.

22b Declarations of Interest

22.2 There were none.

22c Exclusion of the Press and Public

22.3 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).

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

23 MINUTES OF THE PREVIOUS MEETING

23.1

23.2 **RESOLVED** – That subject to the amendment referred to above, the minutes of the Licensing Committee (Licensing Act 2003 Functions) Meeting held on 19 November 2015 be agreed and signed as a correct record.

24 CHAIR'S COMMUNICATIONS

24.1 There were none.

25 PUBLIC INVOLVEMENT

25a Petitions

25.1 There were none.

25b Written Questions

25.2 There were none.

25c Deputations

25.3 There were none.

26 MEMBER INVOLVEMENT

26a Petitions

26.1 There were none.

26b Written Questions

26.2 There were none.

26c Letters

26.3 There were none.

26d Notices of Motion

26.4 There were none.

27 ANNUAL REPORT WORK OF THE LICENSING AUTHORITY

27.1 The Committee considered a report of the Director of Public Health setting out the licensing and gambling functions for Brighton & Hove Council carried out during 2015.

27.2 The Public Health Licensing Lead, Jim Whitelegg highlighted the key areas of work undertaken including work carried out in relation to processing of applications and reviews (there had been five), Gambling Act 2005, Street Drinking/Sensible on Strength, Under Age Drinking the Statement of Licensing Policy (also the subject of a separate report appearing elsewhere on the agenda), Street Trading, Taxi Matters and other

issues germane to the licensing regime, including details and the potential impact of any changes proposed at national level.

- 27.3 It was noted that there had been a number of challenging reviews during 2015 and that these were set out in detail in the report. Since its inception in November 2013, the “Sensible on Strength” scheme had continued as an on-going scheme which was subject to regular reviews. There were currently 131 members plus 23 stores (chains) who had agreed not to sell cheap super strength beers and ciders. Work had also been carried out in concert with both universities during 2015 to seek to ensure that Freshers are promoted as social events where students could meet people (not to encourage irresponsible drinking). Sussex University now had a programme of non-alcohol events including a Brightonian Day tour of landmarks and quirky cafes. As well as the universities the Licensing team had worked with other Events/Promotional Companies to ensure that events within the City such as Bar Crawls have safety measures in place including: Stewarding, On Site Medics, Water Angels, Promoting the Four Licensing Objectives and making evenings “sociable” rather than “Alcohol fuelled”. Officers had contacted the Home Office in January 2016 to see if their accreditation scheme could be rolled out to all universities and discuss different initiatives that have been achieved with Brighton and Sussex University.
- 27.4 In answer to questions by Councillor C Theobald it was confirmed that Uber had yet to commence operation in the city. They had agreed to a number of conditions and to comply with the conditions set out in the “Blue Book”.
- 27.5 Councillor Simson commended the work which had been achieved during the year but sought clarification regarding information presented in some of the tables as this did not appear to tally in the manner she had expected. Councillor Wares concurred in that view requesting that this issue be addressed in future reports. Councillor Wares was also in agreement that future reports should be submitted separately to each of their constituent committees rather than being presented as a composite report to the Licensing Act Committee.
- 27.6 Councillor Moonan stated that in some instances it was difficult to ascertain what the headline trends were/whether there were any across the city as a whole in relation to different types of licensable activity. When Members sat on licensing Panels it gave them a “snapshot” of the different types of activity, however, as the majority of licensing activity did not come before panels for decision it was helpful to receive an overall view in order to enable comparisons to be made. It was explained that as well as giving a general overview the report was intended to draw out those areas which had been identified as giving rise to specific problems and the focus that had been given to them.
- 27.7 Councillor O’Quinn referred to the incidence of sexual exploitation which had been identified, particularly associated with the late night economy. There appeared to have been a rise in the number of assaults and she requested whether there was data available regarding the measures put in place by the police to address this. It was confirmed that this information was not currently available. Councillor Wares considered that the terminology used in relation to this matter could be regarded as ambiguous and thought should be given to rewording that. Inspector Woolford who was in attendance on behalf of the Police responded regarding the on-going work of the Police in seeking to address this issue, including the Beach Buggy and city centre presence at weekends.

- 27.8 Councillor Cobb referred to the number of licensing applications, made, particularly those for Temporary Event Notices (TEN'S), the figures overall appeared constant. Councillor Horan stated that overall robust measures appeared to be in place and this appeared to be well managed. Councillor Page concurred stating that overall a light touch approach appeared to be working well.
- 27.9 Councillor West referred to the over-ranking and bad behaviour by some taxi drivers, in some instances this gave rise to potentially serious public safety issues, issues in relation to over-ranking also occurred at Brighton station and at various "unofficial" ranks across the city, he sought information about measures available to address this. It was explained that the situation was monitored and proportionate action taken, also, that regular meetings took place with representatives of the trade via the Taxi Forum. It should be noted however that a number of the issues which arose fell outside the licensing regime. Councillor Deane stated that she had attended Taxi Forum meetings, whilst Chair of the Committee and whilst acknowledging that these meetings were valuable, these problems needed to be resolved.
- 27.10 Councillor Wares was in agreement that the concerns expressed by Councillor West required further investigation. As part of that a further review of where ranks were located and the times at which they were busiest was needed, consensus with the trade was needed and it might be possible for some spaces/ranks to be relocated/removed.
- 27.11 Councillor Simson stated that she considered it very important that decisions made by Panels often following lengthy and difficult deliberations were supported by the Council. It was acknowledged that each application must be determined on its individual merits.
- 27.12 Councillor Deane stated that the report provided a detail about the broad spectrum activities carried out, some of which were very challenging, it was important to acknowledge that.
- 27.13 It was considered that it would be beneficial if Members could receive the additional details requested for future annual reports, for example, geographical spread and details of the different types of operation and premises.
- 27.14 **RESOLVED** – (1) That the Committee notes the contents of the report; and
(2) That officers continue to monitor trends of applications and illegal activity to inform future policy and provide additional figures/information in the terms indicated in paragraph 27.13 above for future annual reports.

28 LATE NIGHT LEVY CONSULTATION

- 28.1 The Committee considered a report of the Director of Public Health providing an update to the Committee on questions raised concerning the Late Night Levy (LNL) at its last meeting held on 19 November 2015.
- 28.2 At that meeting the committee had resolved following discussion to defer consideration of the report submitted to that meeting in order for a further report to be prepared for their consideration at a future meeting as soon as practicable. It was agreed that further pre-consultation only would take place in parallel with officers obtaining

additional information for inclusion in the further report. It had been agreed that the report would include the following information:

- Details of pre-consultation undertaken with a representative range of stakeholders/premises operators, of various types, capacity, floor area and styles of operation (paragraph 3.2);
- Whether it would be appropriate/practicable to introduce Business Improvement District (BID) arrangements as an alternative to a Late Night Levy (LNL) including details of the differences between the two and how either would work in practice; (paragraph 3.3)
- Precise details of how money raised by a LNL would be spent; (paragraph 3.4)
- Up dated information/feedback in relation to how LNL's already introduced are operating (paragraph 3.5); and
- An assessment of factors which are unique to the city, conference trade, tourism, student population, residents and whether it would appropriate/how "bespoke" arrangements which reflected that mix could be implemented. (paragraph 3.6)

28.3 Details of the pre-consultation undertaken were set out including details of discussions which had taken place at a meeting of the Licensing Strategy Group held on 18 January 2016. Since publication of the report 15 submissions had been received representing 100 venues and those representing the trade setting out their concerns in relation to the imposition of a Late Night Levy, which they considered could damage the late night economy and would not resolve problems arising as a result of pre-loading, expressing their willingness to explore alternative options including a BID.

28.4 It was recommended:

(1) That the committee decide whether to instruct officers to proceed with the formal consultation to raise the levy; and

(2) If it is decided to proceed to consultation, the matters set out in 3.9 of the report should be determined.

28.5 Councillor Simson stated that notwithstanding the additional work undertaken she still had grave doubts about the concept of an LNL. It used a broad brush approach, which she considered was essentially unfair as the burden of cost did not necessarily fall to those creating the greatest nuisance. It was important to fully explore measures which could be implemented in cooperation with the trade. As a consequence of hard work undertaken with the trade successful initiatives such as "Sensible on Strength" and the Taxi Marshall Scheme. In her view the report did not give sufficient detail on these issues. A decision to consult needed to be made on the basis of more detailed information than had been provided to date.

28.6 Councillor Moonan stated that she was concerned that consultation on an LNL at this stage could be premature, as if, new legislation (which was anticipated) adopted a different approach taking on board the concerns expressed in respect of LNL's as they

currently operated, abortive work and expensive would have been incurred. Councillor Moonan considered that the questions as set out in the appendix had been made on the basis of certain assumptions and were also leading in the way that they were worded.

- 28.7 The Quality and Projects Manager, Jean Cranford, explained that it was difficult to predict the level of take up, or how many operators would seek minor variations to their existing licences.
- 28.8 Councillor West stated that he was far happier with the information provided with the current report but was in agreement that to proceed with a consultation at the present time would be premature. He considered that it was important to have further discussions with businesses and operators to ensure that there was a proper debate to enable the issues to be presented and discussed. There could be positive benefits, but positive benefits could accrue from other models too and changes to existing legislation could impact on that too.
- 28.9 Councillor Horan stated that there were other options than an LNL, citing the arrangements in place in Bristol and Leeds and in Chelmsford where voluntary arrangements were being looked into.
- 28.10 Councillor C Theobald sought clarification of the costings put forward in the report and clarification of who and how the LNL would operate. Also details of the cut off times during which the LNL would operate.
- 28.11 Councillor Bell stated that he shared the concerns expressed by Councillors Simson and West if an LNL consultation took place ahead of anticipated legislation from Central Government, abortive work could be undertaken resulting in wasted time money and resources.
- 28.12 Councillor Deane stated that in her view there was a danger of debating the merits of having an LNL, whereas that position had not been reached. There was value in having consultation but this needed to arise in neutral way which would allow all parties to have their say. There were flaws because an LNL did not address pre-loading or availability of alcohol in supermarkets for example.
- 28.13 Councillor Wares stated that he concurred with much that had already been said, although an LNL would address some of the issues that arose, including incidents which had been fuelled by alcohol, it would not address them all and he remained to be convinced that an LNL was the only option, issues such as the provision of the quad bike and taxi marshalls, which were supported by the trade needed to be factored in too. He was concerned that if consultation was undertaken at present in the absence of further guidance from Central Government that when that information was received a further consultation would need to be undertaken in response to it; involving additional expense and work for officers.
- 28.14 Councillor Page stated that it was clear that there was a desire to work pro-actively with the trade. He was concerned that unless obliged to do so that operators would pay. It was important to seek to ensure that schemes such as the taxi marshalls continued. It had been acknowledged that there were issues associated with

alcohol misuse in the city, particularly the city centre and it was in response to them that the CIZ had been drawn up.

- 28.15 Councillor Allen stated that before agreeing to go forward with a consultation process members needed to be of the view that was appropriate, whilst that might be the case ultimately he considered that for members to vote on this issue now would be premature.
- 28.16 Councillor Inkpin-Leissner stated that all options needed to be pursued and any decision to proceed needed to be made on the basis of all available information.
- 28.17 Councillor Simson reiterated her earlier comments that she considered that it would be premature to carry out any consultation ahead of Home Office guidance. Whilst that was awaited officers could look further at voluntary schemes and to discuss potential options with operators and other interested parties. It was important to address the issue without penalising well run businesses.
- 28.18 Councillor West stated that it was disappointing that as this was the second time that a report on the LNL had come before the Committee there were still a number of matters to be resolved and the Committee did not appear to be in a position to move forward. Councillor Allen concurred but considered that Members needed to feel that they were in possession of sufficient information to carry out a meaningful consultation process.
- 28.19 Inspector Katy Woolford and Jean Irving Police Head of Licensing were in attendance in order to answer any questions and queries which Members of the Committee might have and at this point, following the initial discussion and debate, the Chair invited the Police representatives forward to answer Members questions. The Head of Police Licensing stated that she considered that there was confusion and lack of clarity around this issue at this point in time, Members were simply being asked to consult to ascertain the level of support for an LNL and to explore the practicalities of so doing, rather than making a decision to do so/confirming a decision to do so.
- 28.20 The Police and Crime Commissioner had sent a letter of confirmation(included with the papers before the Committee that day), that any monies raised from a levy would be used to support services across the city and would not be used elsewhere within the region. Recent discussions which had taken place with the Home Office had indicated that as/when any changes to the existing legislation were made amendments could be made to any arrangements already in place without the necessity for further expenditure or a requirement re-consult.
- 28.21 In answer to further questions, Inspector Woolford referred to the fact that there were a number of schemes in operation across the city which were associated with the late night economy e.g., the beach patrols/buggy which were manpower intensive but were also recognised as being of great value in creating “safe spaces” and in seeking to protect those who were under the influence of alcohol and were vulnerable. The Police were fully committed to continuing to offer these services, but like the local authority were under increasing financial pressure. Money generated in this way could be used to support initiatives associated with the late night economy. It was also important to note that even if an LNL was agreed to ultimately, implementation was not immediate as there was a further lead in period.

- 28.22 Councillor Moonan stated that whilst there was no unwillingness to consult or to listen to feedback received, any consultation needed to go forward in an open and balanced way. Current legislation appeared to be a “blunt instrument” in terms of seeking to achieve its aims and it would be premature to proceed in the absence of knowledge of proposed changes or a full exploration of potential alternative options.
- 28.23 Councillor Bell stated that he remained of the view that a clearer and more detailed financial breakdown was needed than had been provided, notwithstanding the explanation given that this could not be predicted fully in the absence of knowing what take up an LNL would have. Councillor Bell was also of the view that more in-depth information needed to be provided in respect of alternative options and costings for them.
- 28.24 Councillor West stated that he considered that, as the matter appeared to have been debated fully, the Committee should move to a vote on the recommendations contained in the report.
- 28.25 Councillor Cobb stated that she was not averse to the concept of an LNL as she considered that there was much to commend it.
- 28.26 The Chair stated that it appeared to be the view of the Committee that it would be premature to proceed with consultation as it stood. On that basis she proposed to put each of constituent recommendations to the vote separately.
- 28.27 Councillor Simson suggested it would be simpler to propose alternative recommendations (these are set out below), these were seconded by Councillor West.
- 28.28 A vote was then taken and the original recommendations were lost on a vote of 14 to 1. A vote was then taken on the recommendations as set out below and those were agreed on a vote of 14 to 1.
- 28.29 **RESOLVED** – (1) That the Committee defer any decision to proceed with formal consultation to raise a Late Night Levy until such time, as Home Office proposals to change the nature of the levy are clarified and approved; and
- (2) That the Committee request officers explore other alternative options including voluntary schemes for the reduction of crime and disorder in the late night economy and incorporate them into the final report.

29 **GAMBLING POLICY**

- 29.1 The Committee considered a report of the Director of Public Health setting out the proposed Draft Gambling Policy 2016-2018 requesting that approval be given to carry out consultation on the draft policy.
- 29.2 It was noted that it was a requirement of the Gambling Act 2005 that Licensing Authorities prepare, every three years, a statement (also known as a Policy) of the principles which they propose to apply when exercising their functions ,and they must

publish the statement following the procedure set out in the Act, including whom they should consult.

- 29.3 Licensing officers, in conjunction with colleagues from the Public Health analyst team had been re-writing the Gambling Statement of Principles in light of the forthcoming changes to the Licensing Conditions and Code of Practice (LCCP) and Guidance for Local Authorities (GLA), to incorporate the new social responsibility requirements which come into force in April 2016. A document outlining the key changes was included at appendix 2 to the report. A report had been brought before Committee in November 2015 when the existing Gambling Policy had last been refreshed. The report before the Committee represented an interim review which included some minor changes and updating of out of date information.
- 29.4 In order to fully update the Policy to take on board changes in legislation it was proposed that a full consultation be undertaken which would last for 3 months. Following analysis of that consultation, officers would report back to committee with a proposed Gambling Policy which, if approved, will progress to Full Council for approval.
- 29.5 Councillor Simson commended the report which provided an interesting and timely update. The successful work carried out in concert with the Gambling Commission following a series of failed test purchases which had highlighted a particular problem was noted and welcomed.
- 29.6 Councillor Page referred to the Licensing Objectives and to the fact that mental health impacts could now be taken into account, the impact of gambling addiction both on individuals and their families could be devastating. It was explained that generally the focus of the Gambling Act was slightly different to that of Licensing Policies and that overall there had been a reduction in the number of such premises across the city over recent years. Generally, the operation of these premises had not given rise to as many problems as other types of licensed premises nor had a negative impact within the night time economy.
- 29.7 Councillor Wares enquired regarding the cost of carrying out the consultation and it was explained that these costs, which would be minimal, would be covered by the level of fees charged. Councillor Wares noted this but requested that details of the costs involved be included in the further report to Committee following the consultation.
- 29.8 A vote was taken and the 14 Members present voted unanimously in respect of the recommendation set out in the report.
- 29.9 **RESOLVED** – That the Committee instruct officers to carry out consultation on the draft policy (attached as appendix 1 to the report).

Note: Councillor West was not present at the meeting during consideration of the above item.

30 STATEMENT OF LICENSING POLICY

- 30.1 The Committee considered a report of the Director of Public Health seeking agreement to the proposed revisions to the Statement of Licensing Policy (SOLP).

- 30.2 It was explained that as a licensing authority the Council was required to carry out a consultation exercise prior to any review of its Licensing Policy under Section 5 (3) of the 2003 Licensing Act. Having considered a report at its meeting on 25 June 2015, the Committee had authorised officers to initiate consultation regarding a review of the Statement of Licensing Policy.
- 30.3 The consultation had commenced on 30 September 2015 and had closed on 5 January 2016 and had sought the views of the Licensing Strategy Group which included businesses represented by the City Centre and the Hove Business Forum, Police, Tourism, the Events Office, the Seafront Office (including the Seafront Trader Association), Trading Standards, Legal and Finance and representatives of residents and community associations. Views had also been sought via the council's consultation portal and the council's website via its licensing pages. It was noted that the circulated copy of the revised policy included tracked changes in order to enable members to identify what the proposed changes were, these were also referred to in paragraphs 5.8 and 5.9 of the report.
- 30.4 Councillor Cobb asked for examples/clarification in respect of the non-residential areas as referred to in the report excepting Churchill Square and the Racecourse. It was explained that the "mixed use" definition set out in the existing policy had been removed as a result of feedback received, there was no blanket category/definition, applications would continue be determined by Panel's on their individual merits.
- 30.5 Councillor Simson stated that it was disappointing that responses to the consultation had been relatively few in number. Overall, the proposed changes were welcomed, she also had concerns however, regarding how some elements of the policy might work in practice, accepting however that the SOLP was always a work in progress which was amended periodically. Further changes could be made in future as/if appropriate in the light of operating experience.
- 30.6 Councillor Simson also referred to the reference to the Late Night Levy (Page 200) of the SOLP, in view of the Committees' earlier decision to defer consultation pro-tem, it was now appropriate for this to be removed. The Committee were in agreement.
- 30.7 Councillor Deane welcomed the proposed changes overall, expressing her support for them, with one notable exception, however. Councillor Deane referred to the strength of feeling and concern expressed by residents in her own ward and elsewhere in the city in relation to the presumption of approval of café bars within the CIA. Residents within these areas were already subject to late night noise and other disturbance and if the matrix remained as currently drafted, it would make it difficult for Panel's to reject such applications in future and could encourage an increase in applications as a means of opening premises supplying alcohol within the CIA. The Legal Adviser to the Committee expressed her concern that at this stage the committee was considering the consultation responses and giving them appropriate weight. She was not sure that the responses supported this change. Councillor Deane disagreed.

- 30.8 In answer to questions by Councillor Wares and Councillor Page it was clarified that such establishments could not operate as vertical drinking establishments, orders were taken by and served to customers at their table “substantial” meals needed to be available on the premises. Councillor Deane stated that as she understood it, café bar conditions required food to be available during their hours of operation, but were ambiguous in that they did not specifically preclude customers from drinking alcohol without the need to purchase and consume food. Councillor Wares was of the view that there was a difference between an establishment which sought to operate essentially as a restaurant and one where the main driver for the business was the sale of alcohol.
- 30.9 Councillor Cobb stated that she did not consider that the matrix needed further amendment as suggested considering that the current wording was acceptable. All applications were considered by Panel’s on their individual merits, presumption that a particular type of application could be acceptable did not guarantee an automatic approval.
- 30.10 Councillor Simson concurred in that view, she was not aware that there had been any increase in this type of operation or that one was anticipated, she considered that the existing wording was acceptable, reiterating her earlier comments that changes were recommended as appropriate as a result of on-going review of the policy.
- 30.11 Councillor O’Quinn stated that she was in agreement with and supported the proposed amendment considering that it would give Panels more “teeth” whilst giving the ability to make exceptions in instances where they considered it appropriate. Councillors Moonan and Councillor Inkipin-Leissner concurred in that view.
- 30.12 Councillor Horan stated that the Committee needed to have confidence that changes were made in response to an identified problem, enquiring regarding the timeframe within which the policy would be revisited. The Public Health Licensing Manager referred to paragraph 3.3.3 where the policy stated that the Local Authority may look favourably on café bars. Reference to “pubs” had been taken out and replaced with a category that the policy had always supported on the basis that they would not promote vertical drinking. The policy and the matrix must be evidence based and should not be a blanket “no” unless there was evidence to show that café bars caused problems to undermine license objectives.
- 30.13 It was explained there was a requirement for the policy to be reviewed every five years, but that it could be reviewed at any time following implementation. It was confirmed that the policy could be implemented following approval by full council. The Trading Standards Manager, stated that there could capacity/financial implications if the SOLP were to be reviewed soon after implementation.
- 30.14 Councillor Bell indicated that the revised Policy would need to operate for a sufficient period for any themes to emerge, suggesting that it would be appropriate for the Committee to receive an update report in 12 months or as

appropriate in the light of operating experience of the revised SOLP and Members concurred with that approach.

- 30.15 A vote was taken and the 14 Members present agreed unanimously that reference(s) in the document to the Late Night Levy LNL be removed and that a further update report regarding the revised SOLP be brought back to the Committee in 12 months or as appropriate in the light of operating experience.
- 30.16 A further vote was then taken in relation to the amendment proposed by Councillor Deane and seconded by Councillor O'Quinn that the word "yes" should be replaced by "no" under the column referring to café bars located within the Cumulative Impact Area (CIA) in the matrix set out at Page 194 of the circulated papers. On a vote of 8 to 5 with 1 abstention the proposed amendment was agreed.
- 30.17 **RESOLVED** – (1) That the Committee agree the proposed revisions to the Statement of Licensing Policy; including:

removal of reference(s) to the Late Night Levy (LNL); and

replacement of the word "yes" by "no" under the column referring to café bars located within the Cumulative Impact Area (CIA) in the matrix set out at Page 194 of the circulated papers (paragraph 30. 12 above also refers). A further update report to be provided to the Committee in 12 months or as appropriate in the light operating experience following implementation of the updated policy.

RESOLVED TO RECOMMEND – That the revised Statement of Licensing Policy is referred to Full Council for adoption, subject to the further amendments agreed by the Committee and set out in Resolution 1 above.

Note: Councillor West was not present during consideration or voting in respect of the above item.

31 ITEMS TO GO FORWARD TO COUNCIL

- 31.1 It was agreed that the following item would need to go forward to Full Council for adoption:

Item 30 – "Statement of Licensing Policy Consultation Response."

The meeting concluded at 6.45pm

Signed

Chairman

Dated this

day of