

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

