

LICENSING COMMITTEE (LICENSING ACT 2003 FUNCTIONS)

Agenda Item 18
Brighton & Hove City Council

Subject:	Review of Statement of Licensing Policy – Consultation response report 2018
Date of Meeting:	29 November 2018
Report of:	Executive Director of Neighbourhoods, Communities & Housing
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Wards Affected:	All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 The Council, as Licensing Authority, has a statutory duty to review its Statement of Licensing Policy (SoLP) every five years. The current policy was adopted on 24 March 2016 by Full Council. The policy should be kept under review.
- 1.2 The Council, as a licensing authority must carry out a consultation exercise prior to any review of its Licensing Policy (Section 5(3) of the 2003 Act).
- 1.3 On 28th June 2018 Members authorised officers to go out to statutory consultation with the proposal to expand the Special Stress Area (SSA) to cover Central Hove and to consult on the café/bar category and a revised Matrix.

2. RECOMMENDATIONS:

- 2.1 That Committee agree the revisions to the Statement of Licensing Policy as follows:
 - 2.1.1 Expand Special Stress Area (SSA) into Central Hove
 - 2.1.2 Change the name of the “café bar” category to “café” and reflect this in the policy
 - 2.1.3 Reduce “café” hours to 10.00pm within CIA category of the matrix
- 2.2 That the revised Statement of Licensing Policy is referred to Full Council for adoption.

3. CONSULTATION

3.1 Consultation commenced on 23rd July 2018, but was restarted on the 9th August, due to an error on the on-line portal, closing on the 4th October 2018. A copy of the consultation document, including the proposed extended SSA, can be found in Appendix A.

3.2 National Guidance states at 13.4 that before determining its policy, the licensing authority must consult the persons listed in section 5(3) of the 2003 Act. These are:

- The chief officer of police for the area
- The fire and rescue authority for the area
- The local authority's Director of Public Health in England
- Persons/bodies representative of local premises licence holders
- Persons/bodies representative of local club premises certificate holders
- Persons/bodies representative of local personal licence holders; and
- Persons/bodies representative of businesses and residents in its area.

3.3 Consultation was undertaken with these statutory consultees and more generally via the consultation, Licensing Strategy Group, the city LATs (Local Action Teams), BID, B&H Economic Partnership and Brilliant Brighton. If committee are minded to agree the recommendations, the revised statement of licensing policy must be referred to Full Council.

4. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

4.1 Expanding the Special Stress Area (SSA) to cover Central Hove

Officers and Police Licensing support extension of SSA to reflect the number of licensed premises in Church Road Hove, the evidence from Public Health framework document and that it would be consistent with the current SSA that acts as a buffer to the CIZ. The SSA is defined as an area of concern to be monitored for levels of public nuisance and anti social behaviour (ASB). Applications in the SSA are expected to have a robust operating schedule with appropriate conditions. Unlike the CIZ there is no presumption of refusal. The Police's submission is contained in Appendix B.

4.2 Café Bars

The Council's Statement of Licensing Policy (SoLP) (paragraph 3.3.3) states: **Café Bars** - the licensing authority may be prepared to look favourably upon an application for the grant of a licence, subject to the following conditions that will prevent the premises becoming a public house.

- The sale of intoxicating liquor and other beverages shall be waiter/waitress service for consumption by persons seated at tables.
- Substantial food shall be available at all times.

The current situation regarding café bars is:

- Annual report shows an increase in café bars granted 2017/18 but a big decrease in pubs/clubs. There are considerably more pubs and restaurants in the City compared to café bars. As of March 2018 there were 323 Pubs, bars & nightclubs, 297 Restaurants and 89 café bars.
- SoLP look favourably on Café bars 3.3.3
- Cumulative Impact Policy (CIP) is not absolute and recognises the different impact from different types of venues
- The term “café bars” to define this category of premises is misleading. Officers suggest the term “café” is more appropriate as essentially we are not talking about bars but small food led cafes or delis where alcohol is not the primary activity and the venues do not open late. It is also suggested adding notes to the matrix that this category is defined as “small food led establishments”.
- It is suggested that the character and operation of this kind of premises is different from that of a pub. Alcohol is not the primary focus, and thus patrons are not likely to become intoxicated. The hours are limited. There is less potential for negative impact on the four licensing objectives: The prevention of crime & disorder, public safety, the prevention of public nuisance and protection of children from harm.

4.3 To change policy we would need evidence to show these venues are undermining one or more of the four licensing objectives and/or are contributing to negative cumulative impact.

4.4 The matrix approach provides a vision of what the licensing authority would like to see within its area and gives an indication of likelihood of success or otherwise to investors and local businesses making applications. It is a mechanism for the locally accountable licensing authority to shape its local area and address public, social policy issues. It balances the need for protection for local residents against the interests of the local economy, local employment and potential investors. The matrix does not apply to existing premises, just new/variation applications. It is illustrative and each panel must consider each application on merit, including location and type of premises/activities.

4.5 Café bar conditions have been around before the Licensing Act 2003 and were converted over from some licences from the old Magistrates court so they are not a new concept. Since café bars, as a category, were formerly introduced in to the Matrix in 2016 there has been an increase in the number of applications for café bars but a decrease in both restaurant and pub applications. Prior to this there was a lot of confusion around where café bars fell within the Matrix, whether they should be considered a restaurant or a bar.

4.6 Following consultation it is proposed to change the name from “café bar” to “café” both in the body of the policy and to add a note to the matrix.

4.7 Although the police do not support the reduction, the balance of supporters from the portal is marginally in favour of a reduction of hours, with most responses 10pm or later. Public Health make the point that licensed cafes may encourage moderate drinking in the evenings by the clientele who might otherwise go to pubs and bars.

4.8 Concern has been raised about the increase in café bars granted in the CIZ. Resident's representations to licensing panels have highlighted issues of saturation of licensing premises in the CIZ, particularly the North Laine area, leading to an increase in public nuisance and Members have raised their concerns. Therefore, it is suggested to reduce the hours of café bars in the CIZ from the current 11.30pm to 10pm.

5. CONSULTATION RESPONSES

A summary of the responses are detailed below. A copy all the other consultation responses can be found in Appendix B.

- 2 Responsible Authorities responded (Police and Director of Public Health).
- 5 responses were received by letter or email, 3 from local residents, 1 local business, and British Beer and Pub Association (BBPA).
- 73 responses were received via the council's on-line consultation portal.

5.1 Sussex Police Response

Sussex Police consultation response includes a report on extending the SSA into Central Hove and detailed analysis of incidents in café/bars compared to other categories of licensed premises. A full copy of the Police's consultation response can be found in Appendix B.

Q.1. Police support strongly agree with the proposal to extend the SSA into Central Hove and provide details of incident analysis and mapping of alcohol related incidents and licensed premises in Central Hove.

Q.2a. Police also strongly agree with the proposal to change the name of the café bar category to "café".

Q.2b. The Police tend to disagree with the proposal to reduce the hours for café bars in the CIZ. They have reviewed data relating to premises types, including the number of incidents and a weekly breakdown during 2017. Also included are tables for types of premises, number and types of incidents and the time those incidents occurred. The police conclude that there is not the evidence to support a reduction in the hours for the café bar category.

5.2 Director of Public Health Response

A full copy of the Director of Public Health's (DoPH) consultation response can be found in Appendix B.

Q.1. Director of Public Health (DoPH) support the proposal to extend the SSA into Central Hove, referencing the Public Health Framework for Assessing Alcohol Licensing document.

Q.2. DoPH agrees with the change of name from “café/bars” to “café”. With regards to reducing hours for café/bar category in CIZ to earlier in the evening, the DoPH states that in general public health would support initiatives aimed at reducing the amount of alcohol available across the city. Reducing the times during which cafes could serve alcohol to their customers would most probably contribute to this. However, what is not clear is whether licensed cafes encourage moderate drinking in the evenings by their clientele who might otherwise go to pubs and bars.

5.3 Email responses

Two local residents and 1 local business emailed in support of extending the SSA into Central Hove. The British Beer and Pub Association (BBPA) also made a submission against the extension of the SSA.

All responses can be found in Appendix B.

5.4 On-line Portal responses

A total of 78 responses were received via the portal – 54 responding as local residents, 8 local community reps, 4 visitors, 1 stakeholder, 1 licence holder and 10 local businesses. A summary of the responses is detailed below:

Q.1. Extending the SSA into Central Hove

- 37 Strongly agreed
- 19 Tended to agree
- 9 Strongly disagreed
- 5 Tended to disagree
- 3 Neither

Q.2a. Change name “Café Bar” to “Café”

- 29 Strongly agreed
- 16 Tended to agree
- 11 Strongly disagreed
- 6 Tended to disagree
- 11 Neither

Q.2b. Reduce Hours for “Café Bars” in CIZ

- 30 Strongly agreed
- 12 Tended to agree
- 16 Strongly disagreed
- 9 Tended to disagree
- 6 Neither

For those respondents that agreed with the proposal to reduce hours for café bars in the CIZ, the following times were suggested:

- 23.00Hrs 7 suggestions
- 22.30Hrs 5 suggestions
- 22.00Hrs 10 suggestions
- 21.30Hrs 2 suggestion
- 21.00Hrs 4 suggestions
- 20.00Hrs 3 suggestions
- 19.00Hrs 1 suggestion

If members were minded to agree the statement of licensing policy, Full Council alone can exercise the function of revising the authority's policy.

6. FINANCIAL & OTHER IMPLICATIONS:

6.1 Financial Implications:

There are no financial implications arising from the recommendations made in this report. 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 by government.

Finance Officer Consulted: Michael Bentley

Date: 12.10.18

6.2 Legal Implications:

These are set out in the report. The SoLP should follow the fundamental principles set out in the Licensing Act 2003 and statutory guidance. Following the consultation exercise, the views of all those persons or bodies should be given appropriate weight when determining the policy. Revisions made to the policy without evidential basis are likely to be vulnerable to challenge.

Lawyer Consulted: Rebecca Sidell

Date:

6.3 Equalities Implications:

A rebuttal presumption against new licensed premises in a CIA may reduce the ability for small businesses to open as off-licences. Affected businesses may often be operated by members of minority ethnic groups.

6.4 Sustainability Implications:

Licensed premises throughout the city rely on local licensing policies in ensuring there is clear guidance on the continued operation of local businesses. Maintaining a regularly reviewed policy, which has undergone public consultation, will ensure a consistency of support to licensed premises, members of the public and other stakeholders affected by these activities.

6.5 Crime & Disorder Implications:

CIA proposals are geographically based around evidence of crime and disorder, etc. and should assist in the council's overall aim in reducing current levels. The Special Policy promotes the four licensing objectives: public safety, the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm.

6.6 Risk and Opportunity Management Implications:

Failure to meet this statutory duty would lead to uncertainties in decision making, loss of business continuity and an inability to meet customer care standards.

6.7 Corporate / Citywide Implications:

The policy promotes the licensing objectives and sets out a general approach to making licensing decisions. The licensing authority must carry out its functions with a view to promoting the licensing objectives and this Special Policy is framed around those objectives.

Proposals for new licensed premises, or for certain variations to existing ones, within a CIA will normally be refused following relevant representations unless it can be demonstrated that there will be no negative cumulative impact.

SUPPORTING DOCUMENTATION

Appendices:

Appendix A – Copy of consultation document and map of area to be covered by expansion of Special Stress Area

Appendix B – Consultation responses

Appendix C – Proposed Matrix and notes

Documents in Members' Rooms

Brighton & Hove City Council, Licensing Act 2003: Statement of Licensing Policy 2016 as amended 24th March 2016.

Home Office, Revised Guidance issued under section 182 of the Licensing Act 2003, April 2018.

Background Documents

Brighton & Hove City Council, Licensing Act 2003: Statement of Licensing Policy 2016 as amended 24th March 2016.