

# Licensing Panel (Licensing Act 2003 Functions)

**Agenda Item**  
Brighton & Hove City Council

<b>Subject:</b>	<b>Review of a Premises Licence under the Licensing Act 2003</b>		
<b>Premises:</b>	<b>Happy Shopper 4 - 8 Upper Bevendean Avenue Brighton BN2 4FF</b>		
<b>Premises Licence Holder:</b>	<b>Malarmathy Tharmaseelan</b>		
<b>Date of Meeting:</b>	<b>04 April 2023</b>		
<b>Report of:</b>	<b>Executive Director for Housing, Neighbourhoods &amp; Communities</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Corinne Hardcastle</b>	<b>Tel: (01273) 294429</b>
	<b>Email:</b>	<b>corinne.hardcastle@brighton-hove.gov.uk</b>	
<b>Ward(s) affected:</b>	<b>Moulsecoomb And Bevendean</b>		

## 1. PURPOSE OF REPORT AND POLICY CONTEXT

1.1 To review a Premises Licence for Happy Shopper under the Licensing Act 2003.

## 2. RECOMMENDATIONS:

2.1 That the Panel review the licence granted to the premises known as Happy Shopper under the Licensing Act 2003.

## 3. CONTEXT/ BACKGROUND INFORMATION & CONSULTATION

3.1 Existing licence attached at Appendix A.

3.2 Brighton & Hove City Council is both the relevant licensing authority and a responsible authority in respect of any premises and may in its capacity apply under Section 51 of the Licensing Act 2003 for a review of any premises licence in respect of the premises.

3.3 An application was received by the Licensing Authority on 13 February 2023 from Sussex Police, to review the licence granted to the premises known as Happy Shopper, 4 - 8 Upper Bevendean Avenue, Brighton, BN2 4FF.

3.4 The ground for the review relates to the following Licensing objective

- The Protection of Children from Harm

Full details of the grounds for the review (together with a copy of supporting evidence) are attached in Appendix B

3.5 At this hearing the licensing authority must:

- Consider the application made in accordance with Section 51
- Consider any relevant representations
- Take such steps (if any) as are considered appropriate for the promotion of the Licensing objectives. These steps are
  - to modify the conditions of the licence
  - to exclude a licensable activity
  - to remove the designated premises supervisor from the licence
  - to suspend the licence for a period not exceeding 3 months, or
  - to revoke the licence.

And for this purpose, the conditions of a premises licence are modified if any of them are altered, omitted or any new condition is added. It may provide that the modification or exclusion have effect for a specified period not exceeding 3 months. The determination, if not completed at the hearing, shall be within 5 working days of the hearing. Such determinations do not have effect until after the appeal period or, if an appeal is lodged, until after the appeal is disposed of.

### **Representations received**

- 3.6 Details of the representations made are notified to applicants on receipt by the Licensing Authority using a pro-forma. A summary appears below:
- 3.7 One representation has been received from the Licensing and Trading and Standard's Authority on the ground of The Protection of Children from Harm supporting the application submitted by Sussex Police.
- 3.8 Full details of the representation is attached at Appendix C. A map detailing the location of the premises is attached at Appendix D.

## **4. COMMENTARY ON THE LICENSING POLICY**

- 4.1 The following extracts from Brighton & Hove City Council Statement of Licensing Policy are considered relevant to this application and **are numbered as they appear in the policy**:

### **1. Introduction**

#### **1.1**

This Statement of Licensing Policy has been prepared in accordance with the provisions of the Licensing Act 2003 (the Act) and having regard to Guidance issued by the Home Office under Section 182 of the act. This policy takes effect from 4 February 2021. The licensing authority is Brighton & Hove City Council. The purpose of this statement is to promote the licensing objectives and set out a general approach to making licensing decisions. The discretion of the licensing authority in relation to applications under the act is only engaged if 'relevant representations' are made by other persons or responsible authorities. This policy will inform the approach to be taken when deciding applications and imposing conditions when relevant representations are received. It is also intended as a guide for applicants as to what to include in their operating schedules, always recognising that if no representations are received, the application

must be granted. The licensing authority must carry out its functions with a view to promoting the licensing objectives and this policy is framed around those objectives. Each application will be given individual consideration on its merit. The scope of this policy covers the following:

- Retail sales of alcohol;
- The supply of alcohol by or on behalf of a club, or to the order of, a member of the club; The provision of regulated entertainment;
- The provision of late night refreshment.

## **1.2 The licensing objectives are:-**

- (a) Prevention of crime and disorder;
- (b) Public safety;
- (c) Prevention of public nuisance;
- (d) Protection of children from harm.

## **1.3 Scope**

**1.3.1** Licensing is about regulating licensable activities on licensed premises, by qualifying clubs and at temporary events. Any conditions attached to various authorisations will be focused on matters which are within the control of individual licensees and others with relevant authorisations; i.e. the premises and its vicinity. Each application will be given individual consideration on its merit. Nothing in this policy shall undermine the right of any individual to apply under the terms of the act for a variety of permissions and to have any such application considered on its individual merits. Similarly, nothing in this policy shall override the right of any person to make representations on an application or seek a review of a licence or certificate where provision has been made for them to do so in the act.

## **3.3 The Matrix Approach**

The Licensing Authority will support:

**3.3.1** Diversity of premises: ensures that there is a mix of the different types of licensed premises and attracts a more diverse range of customers from different age groups, different communities and with different attitudes to alcohol consumption. It gives potential for positively changing the ambience of the city or an area of it. This will have a positive effect in reducing people's fear of crime and in increasing the number of evening visitors to the city centre. The Community Safety Strategy recognises that too many single uses in a confined area and patrons turning out onto the streets at the same time may create opportunities for violent crime and public disorder and therefore supports mixed use venues encouraging a wider age balance.

**3.3.2** A "matrix" approach to licensing decisions has been adopted and is set out below. It provides a framework of what the licensing authority would like to see within its area and gives an indication of the likelihood of success or otherwise to investor and businesses making applications.

Matrix approach for licensing decisions in a Statement of Licensing Policy (times relates to licensable activities)

## Matrix approach for licensing decisions in a Statement of Licensing Policy

	<b>Cumulative Impact Area</b>	<b>Special Stress Area</b>	<b>Other Areas</b>
<b>Restaurant</b>	Yes (midnight)	Yes (midnight)	Yes (midnight)
<b>Café</b>	Yes (10 pm)	Yes (10 pm)	Yes (10 pm)
<b>Late Night Takeaways</b>	No	Yes (midnight)	Yes (midnight)
<b>Night Club</b>	No	No	No
<b>Pub</b>	No	Yes (11pm)	Yes (midnight)
<b>Non-alcohol lead (e.g. Theatre)</b>	Yes (favourable)	Yes (favourable)	Yes (favourable)
<b>Off-licence</b>	No	No	Yes (Up to 11pm but if in densely residential area may be earlier – see note 7 below)
<b>Members Club (club premises certificate)</b>	Yes (<100 capacity) (11pm)	Yes (<100 capacity) (11pm)	Yes

### Notes on matrix

Subject to the following notes, the policy, as represented in the matrix, will be strictly adhered to:

1. Each application will be considered on individual merit
2. Applications within the CIZ are subject to the special policy on cumulative impact at para 3.1, and those within the special stress area to the special stress policy considerations at para 3.2.
3. Departure from the matrix policy is expected only in exceptional circumstances
4. Exceptional circumstances will not include quality of management or size of venue except where explicitly stated in policy matrix.
5. Exceptional circumstances may include: consultation with and meeting requirements of responsible authorities, an appropriate corporate social responsibility policy, community contribution to offset impact (such as financial contribution to infrastructure), community support, alcohol sale ancillary to business activity (demonstrable to responsible authorities and licensing authority, for instance by licence condition allowing authorised officers access to sales accounts).
6. The following licensing activities are encouraged and valued by the licensing authority: outdoor regulated entertainment, community based street parties,

- members clubs, traditional pubs outside the city centre and non-alcohol led licensable activities, particularly within city centre.
7. Other Areas; consideration will be given to the nature of the area and location in relation to any application. In a residential area for example the concerns of local residents will be relevant when considering applications for off-licences, pubs or cafes, especially if there is evidence of anti-social behaviour, street drinking or underage drinking. Earlier closing times may be appropriate. Regard will be had to the Public Health Framework for assessing alcohol licensing on our website [www.brighton-hove.gov.uk/licensingact](http://www.brighton-hove.gov.uk/licensingact).
  8. In an area where there are already several existing off-licences or where the premises is situated within a parade with another off licence and where representations are received about negative cumulative impact on the licensing objectives of a further premises, the application may be refused on these grounds or restrictions placed on the terminal hour to reflect opening hours of other shops.
  9. Outdoor events will be supported where arranged through the council's event planning process. Generally, regulated entertainment in the open air including tents and marquees should have a maximum closure hour of 2300. Earlier hours may be imposed in sensitive open spaces or near residential areas. The licensing authority will have regard to Noise Council guidance.
  10. Non-alcohol led category does not include "alcohol in shared workplaces". It is recommended that sale of alcohol in shared workspaces should have a terminal hour of no later than 10pm. For further advice and guidance on "alcohol in shared workplaces" please see paragraph 3.3.4-3.3.6.

## **7 Protection of Children from Harm**

The following details and measures are intended to address the need for the protection of children from harm; this includes emotional and physical harm which may be associated with licensed premises and certificated club premises (for example the exposure too early to strong language and sexual expletives, e.g. in the context of film exhibitions or where adult entertainment is provided). It is intended that the admission of children to premises holding a premises licence or club premises certificate should normally be freely allowed without restricting conditions (unless the 2003 Act itself imposes such conditions or there are good reasons to restrict entry or to exclude children completely).

**7.1.1** Licensees should note the concern of the authority that drink related disorder frequently involves under 18's. To prevent illegal purchases of alcohol by such persons, all licensees should work with a suitable 'proof of age' scheme and ensure that appropriate identification is requested prior to entry and when requesting alcohol, where appropriate. Appropriate forms of identification are currently considered to be those recommended by police, trading standards officers and their partners in the Licensing Strategy Group (eg passport, photo driving licence or pass card).

**7.1.2** It is the licensing authority's expectation that all staff responsible for the sale of intoxicating liquor receive information and advice on the licensing laws relating to children and young persons in licensed premises. Licensed premises staff are required to take reasonable steps to prevent under age sales. The licensing authority will not seek to limit the access of children to any premises unless it is necessary for the prevention of emotional or psychological harm to them. Each application will be

considered on its own merit but particular areas that will give rise to concern in respect of children are to be found in section 7.1.4 below.

**7.1.3** To reduce alcohol-induced problematic behaviour by under 18 year olds, to enforce underage purchase and drinking laws and to assist in the protection of children from harm, the licensing authority supports the following measures:-

- a. Police should exercise powers (Confiscation of Alcohol (Young Persons) Act 1997) to remove alcohol from young people on the street
- b. Police and trading standards should implement test purchasing to reduce sales to under 18s in on and off sales licensed premises
- c. Further take-up of proof of age schemes will be promoted
- d. In-house, mystery shopper type schemes operated by local businesses will be supported
- e. Providers of events specifically catering for unaccompanied children should consider whether all staff at such events need to be DBS checked

**7.1.4** The licensing authority will not seek to require that access to any premises is given to children at all times – under normal circumstances this will be left to the discretion of the licensee. The following areas give rise to concern in respect of children, who will normally be excluded from premises:

- where there have been convictions for serving alcohol to minors or with a reputation for underage drinking;
- with a known association with drug taking or dealing;
- where there is a strong element of gambling on the premises;
- where entertainment of an adult or sexual nature is commonly provided;
- where premises are used primarily or exclusively for the sale and consumption of alcohol and there is little or no seating for patrons.

Options may include:

- limitations on the hours when children may be present;
- age limitations (below 18);
- limitations or exclusions when certain activities are taking place;
- requirements for an accompanying adult;
- full exclusion of people under 18.

**7.1.7** Trading standards and the police undertake ongoing enforcement operations around under-age sales and test purchasing. Sussex Police and BCRP undertake work concerning proxy purchases and counterfeit ID as part of the partnership support work with Community Safety and Trading Standards.

**7.1.8** Trading standards have a programme of business support including training for local businesses to avoid under-age sales.

## **8 Integration of Strategies**

**8.1.1** The licensing authority shall secure the proper integration of this policy with local crime prevention, planning policy, transport, tourism and cultural strategies by:-

- Liaising and consulting with the Sussex Police, Community Safety Forum, Sustainability Commission representatives and following the guidance in community safety and crime and disorder strategy
- Liaising and consulting with Public and Alcohol Programme Board
- Liaising and consulting with the East Sussex Fire & Rescue Service
- Liaising and consulting with the Local Strategic Partnership, Safety Advisory Group (Emergency Planning) and Equalities and Social Justice Consultation Forum
- Liaising and consulting with the Planning authority
- Liaising and consulting with the Highways authority
- Liaising and consulting with local business and business associations. Having regard to any future documents issued relating to the Private Security Industry Act 2001, for example liaison or information sharing protocols
- Liaising and consulting with the Trading Standards Team, for example with regard to test purchasing codes of practice

**8.1.2** In line with statutory requirements and the council's Inclusion Policy, the Licensing Authority shall have due regard to the need to eliminate unlawful discrimination, and to promote equality of opportunity and positive relations between persons of diverse backgrounds, for example communities of interest such as: lesbian, gay, bisexual and transgender people; disabled people; racial and ethnic groups; religious and faith groups.

**8.1.3** This policy supports the aims of the tourism strategy, recognising the benefits for the tourism economy of creating a safer and more attractive city centre and improving competitiveness with other European cities. The Licensing Committee should receive any reports relevant to the needs of the local tourist economy and the cultural strategy for the area to ensure that it considers these matters.

**8.1.4** The Licensing Committee should receive relevant information relating to the employment situation of the area and the need for new investment and employment where appropriate.

**8.1.5** Specific conditions may be attached to premises licences to reflect local crime prevention strategies. Such conditions may include the use of closed circuit television cameras, use of the NightSafe radio system or accredited scheme, the provision and use of shatterproof drinking receptacles, drugs and weapons search policy, the use of registered door supervisors, specialised lighting requirements, hours of opening. Certificates issued to club premises shall reflect local crime prevention strategies and may include any or all of the requirements listed above.

**8.1.6** The licensing authority will have regard to the need to disperse people quickly and safely from the city centre to avoid concentrations which may produce disorder and disturbance.

## **8.2 Other regulatory regimes**

**8.2.1** This policy avoids duplication with other regulatory regimes wherever possible. The following notes are made with regard to specific regimes:

### **Health and Safety**

Certain premises will be the subject of health and safety enforcement by the local authority or the Health and Safety Executive (HSE). If other existing law already places certain statutory responsibilities on an employer or operator of premises, for example the Management of Health and Safety at Work Regulations 1999, it will not be necessary to impose the same or similar duties on the premises licence holder or club. However, existing duties will not always adequately cover specific issues that arise on the premises in connection with, for example, certain types of entertainment, and where additional and supplementary measures are necessary to promote the licensing objectives, necessary, proportionate conditions will need to be attached to a licence.

### **Fire Safety**

Premises and their operators will be regulated by general duties under current fire safety regimes and the Regulatory Reform (Fire Safety) Order 2005 rather than licensing provisions.

### **Noise**

Statutory and public nuisances are dealt with by the local authority's Environmental Health department under the Environmental Protection Act 1990, Noise Act 1996 and associated legislation. Noise from commercial premises may often fall under review powers set out in licensing provisions and closure powers in anti-social behaviour provisions.

### **Equality Act 2010**

The Public Sector Equality Duty obliges public authorities to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between persons who share protected characteristics and persons who do not share it. The local authority's equality and inclusion policy produced under these obligations shall include reference to this statement of licensing policy.

### **Community relations**

Integration of corporate strategies with licensing policy will include the Inclusive Council Policy which recognises the council's role, as a community leader, to promote community cohesion and good relations between diverse communities. Measures to address prevention of crime and disorder recognise the need to improve wellbeing and safety of all the communities in the city. Licensing policy supports the Crime and Disorder Reduction Partnership's crime reduction strategy. In particular it seeks to confront and reduce racist, homophobic, transphobic and religiously motivated crimes, incidents and anti-social behaviour.

### **Anti-Social Behaviour, Crime and Policing Act 2014**

Contains powers to close premises that are causing nuisance or disorder. These powers can be exercised by the council or Police and they replace the closure powers in the Licensing Act 2003. The Act also contains powers to issue Community Protection Notices in respect of persons or businesses committing anti-social behaviour which is spoiling a community's quality of life.



## **Litter and Smoking**

CityClean contractors have Clean Neighbourhoods powers to enforce premises operators' responsibilities to keep frontages clear of litter.

## **Gambling Act 2005**

In relation to casinos and bingo clubs, the principal purpose is gaming. The sale of alcohol and the provision of entertainment in such premises is incidental to gaming and in determining whether to permit entertainment that constitutes regulated entertainment under the act, gaming license committees and / or the Gambling Commission will have taken into account relevant government guidance. Accordingly, it is felt that the licensing objectives will have been, or will be in the main, adequately considered by such committees and duplication of conditions should be avoided when considering applications under the 2003 Act where relevant representations have been made.

### **8.3 Enforcement**

**8.3.1** The Enforcement of licensing law and inspection of licensed premises is detailed in the Protocol between Sussex Police, the East Sussex Fire & Rescue Service and Brighton & Hove City Council. This protocol reflects the need for more efficient deployment of Police and Local Authority staff commonly engaged in licensing enforcement and can be found at Appendix D (Lead Agency Status) of the Statement of Licensing Policy. In addition, the Licensing Authority will have regard to its published Licensing Enforcement Policy in making enforcement decisions in accordance with Brighton & Hove City Council's Statement of Licensing Policy (Appendix B). In order to better target enforcement resources, inspections will be undertaken outside of normal office hours and the sharing of information between all enforcement agencies will be encouraged through joint meetings or similar arrangements.

**8.3.2** Attention is drawn to the targeting of agreed problem and high risk premises requiring greater attention as identified in the protocol. A number of other council and government policies, strategies and guidance documents must be taken into account to complement the policy, including:

- Community Safety & Crime Reduction Strategy
- Drugs and alcohol strategies – local alcohol harm reduction strategy
- Objectives of the Security Industry Authority
- The Anti-Social Behaviour Act 2003/ASBPC Act 2014
- The Health Act 2006
- The Violent Crime Reduction Act 2006
- Policing and Crime Act 2009

## **9 Reviews**

**9.1.1** Reviews represent a key protection for the community. Where the licensing authority considers action necessary under its statutory powers it will take necessary steps to support the licensing objectives. Action following review will be informed by licensing enforcement policy – Appendix B.

**9.1.2** Where style of operation of a premises leads to applications concerning likelihood of racist, religiously motivated, homophobic or transphobic crimes or incidents, the

review process should also support the community safety policy. Action should be proportionate and licences would normally be suspended or revoked in these circumstances to deter further incidents.

## **5. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

- 5.1 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 Michael Bentley*

*Date: 22/03/23*

### Legal Implications:

- 5.2 The licensing authority must act to promote the four licensing objectives which are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

The licensing authority must have regard to its statement of licensing policy and the guidance issued by the Secretary of State in carrying out its functions.

*Lawyer Consulted: Rebecca Sidell*

*Date: 21/03/23*

### Equalities Implications:

- 5.3 Diversity is valued and strong, safe communities are vital to future prosperity. Licensing policy aims to protect children from harm including sale and supply of alcohol to children.

### Sustainability Implications:

- 5.4 Licensing policy aims to prevent public nuisance and develop culture of live music, dancing and theatre.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Appendix A – Part A of Premises Licence
2. Appendix B – Review Application
2. Appendix C – Representation

3. Appendix D – Map of area

**Documents in Members' Rooms**

Brighton & Hove City Council, Licensing Act 2003: Statement of Licensing Policy 2021.

Home Office, Revised Guidance issued under section 182 of the Licensing Act 2003, December 2022.

Public Health Framework for Assessing Alcohol Licensing – January 2022.

**Background Documents**

Brighton & Hove City Council, Licensing Act 2003: Statement of Licensing Policy 2021.

