

Subject:	Responsible Licensing		
Date of Meeting:	11 March 2010		
Report of:	Director of Environment		
Contact Officer:	Name:	Tim Nichols	Tel: 29-2163
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Key Decision:	No		
Wards Affected:	All		

FOR GENERAL RELEASE**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 On 28 January 2010, a notice of motion was moved, as set out in appendix 1.
- 1.2 The Cabinet was asked to consider how planning policy and enforcement could be more effectively used to supplement the existing licensing powers to control the availability of alcohol through licensed premises in the City and to bring forward a report as a matter of priority.

2. RECOMMENDATIONS:

- 2.1 That the work of the Licensing Committee is noted and endorsed.
- 2.2 That the respective roles of the licensing and planning authorities are noted.
- 2.3 That, where possible, and subject to legal requirements, Members would welcome that the Council aim to ensure a consistent approach between the two Council functions.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**3.1 Background**

- (a) At licensing committee on 26 November 2009, licensing members considered a Health Impact Assessment of Licensing. This document is available in the Members Room. As a result, officers have written to the Secretary of State at Culture, Media and Sport requesting that public health is considered a Licensing Act objective. The results of the Health Impact Assessment will be used to inform the Statement of Licensing Policy to be reviewed during 2010 and will also be reported to appropriate Scrutiny committees and the Planning Committee.

- (b) The Home Office is currently analysing consultation of the Mandatory Code that will arise from the Policing and Crime Act 2009. It will deal with banning irresponsible promotions and practices, like dentist chairs and also deal with health protection measures and tightening controls on sale of alcohol to under 18's.
- (c) At Licensing Committee, a report on CYPOSC work relating to reducing alcohol related harm to children and young people was deferred and is now expected to be reported to the next available Licensing Committee on 4th March 2010.
- (d) The Policing and Crime Act is also expected to give individual members of the council the ability to be interested parties and call for a review. It will change the offence of persistent sale of alcohol to children so that two occasions could result in enforcement action. There are also new offences of persistently possessing alcohol in a public place and the directions that police use to require people to leave an area is extended to those aged 10 and over.
- (e) The way the city council's Trading Standards Officers improve compliance through business support is cited in the Local Better Regulation Offices document "Better Local Regulation: Supporting businesses towards recovery".
- (f) Analysis of pathways and interventions resulting from the Crime and Disorder Reduction Partnership's work on the alcohol support programme and Beacon work managing the night time economy illustrates the value of innovative partnership working providing value for money, supporting the local Council's reputation and the local economy by creating strong relationships between the licensed trade, customers and public services, salient in the current economic climate.

3.2 Licensing regulation will be amended by the Policing and Crime Act 2009 (PCA) the Mandatory Code as follows:

- (a) Banning irresponsible promotions.
- (b) Banning "dentist chairs" where drink is poured directly into the mouths of customers making it impossible for them to control the amount they are drinking.
- (c) Ensuring free tap water is available for customers - allowing people to space out their drinks and reduce the risks of becoming dangerously drunk.
- (d) Ensuring all those who sell alcohol have an age verification policy in place requiring them to check ID of anyone who looks under 18 to prevent underage drinking which can lead to anti-social behaviour and put young people at risk of harm.
- (e) Ensuring that all on trade premises make available small measures of beers, wine and spirits to customers so customers have the choice between a single or double measure of spirits and a large or small glass of wine.

Implementation timetable

3.3 The Home Office is aiming to implement the various provisions in the PCA, however various steps have to be taken before the planned dates.

- (a) S33 - Individual members of licensing authorities to be interested parties – 29 January 2010.
 - (b) Lap dancing – April 2010 (Home Office needs to draft and consult on guidance as well as resolve the transitional arrangements before implementation).
 - (c) S32 Mandatory conditions – April 2010 (again Home Office will need to draw up secondary legislation for the conditions, and S182 guidance will also need to be amended before implementation).
 - (d) S28 of the PCA, changing the offence from 3 to 2 or more different occasions (of selling alcohol to children) - 29 January 2010.
 - (e) S29 (confiscation of alcohol from under 18's).
 - (f) S30 (new offence of persistently possessing alcohol in a public place by under 18's).
 - (g) S31 (extending Directions to Leave to those aged 10 or over) – 29 January 2010.
- 3.4 Recommendations have been made by CYPOSC for consideration within the review of the Statement of Licensing Policy, scheduled for this year: CYPOSC recommendations are scheduled to be reported to Licensing Committee on 4 March 2010.
- 3.5 **Licensing Guidance** is issued by Department of Culture, Media and Sport, under section 182 of the Licensing Act 2003. Below are paragraphs relevant to the relationship between licensing powers and planning policy and enforcement.

13.64 The statement of licensing policy should indicate that planning, building control and licensing regimes will be properly separated to avoid duplication and inefficiency. Applications for premises licences for permanent commercial premises should normally be from businesses with planning consent for the property concerned. However, applications for licences may be made before any relevant planning permission has been sought or granted by the planning authority.

13.65 The planning and licensing regimes involve consideration of different (albeit related) matters. For instance, licensing considers public nuisance whereas planning considers amenity. As such licensing applications should not be a re-run of the planning application and should not cut across decisions taken by the local authority planning committee or following appeals against decisions taken by that committee. Licensing committees are not bound by decisions made by a planning committee, and vice versa.

13.66 The granting by the licensing committee of any variation of a licence which involves a material alteration to a building would not relieve the applicant of the need to apply for planning permission or building control where appropriate.

13.67 There are also circumstances when as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time.

Premises operating in breach of their planning permission would be liable to prosecution under planning law.

13.23 There can be confusion about the difference between “need” and the “cumulative impact” of premises on the licensing objectives, for example, on crime and disorder. “Need” concerns the commercial demand for another pub or restaurant or hotel. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy. “Need” is a matter for planning committees and for the market.

13.39 Once away from the licensed premises a minority of consumers will behave badly and unlawfully. To enable the general public to appreciate the breadth of the strategy for addressing these problems, statements of policy should also indicate the other mechanisms both within and outside the licensing regime that are available for addressing such issues.

The Planning Context

- 3.6 Current adopted policies within the Brighton & Hove Local Plan recognises these concerns and makes provision for the protection of public amenity (policy QD27), whilst also addressing the issues in relation to cumulative impact from a concentration of nightclubs, bars, and pubs in particular areas (policies SR12 and SR13).
- 3.7 Emerging policy within the Local Development Framework Document, The Core Strategy is underpinned by evidence from the Community Safety, Crime and Drugs Audit 2004 which informed the strategic approach. This was developed in consultation with the Licensing Team. The overall objective is to reinforce Brighton’s (policy SA2) is to promote a balanced range of complementary evening and night-time economy uses which appeal to a wide range of age and social groups, avoid a spread of large bars/pubs and night clubs and address public safety concerns.
- 3.8 Where appropriate when considering planning applications within the above policy framework planning conditions can be attached to permissions to safeguard amenity and mitigate against cumulative impact.

4. CONSULTATION

- 4.1 Planning advice is incorporated.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 There are no direct financial implications associated with 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 at a level to allow licensing authorities to fully recover the costs of administration, inspection and enforcement of the regime

Finance Officer Consulted: Karen Brookshaw

Date: 15/02/10

Legal Implications:

- 5.2 The statement of licensing policy should indicate that planning, building control and licensing regimes will be properly separated to avoid duplication and inefficiency.
Planning and licensing are Council, not executive functions, subject to different legislation.

Lawyer Consulted:

Rebecca Sidell

Date: 15/02/10

Equalities Implications:

- 5.3 A statement of licensing policy should also recognise that the Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000, places a legal obligation on public authorities to have due regard to the need to eliminate unlawful discrimination; and to promote equality of opportunity and good relations between persons of different racial groups;

Sustainability Implications:

- 5.4 The licensing objectives are: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm.

Crime & Disorder Implications:

- 5.5 Licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned. Nonetheless, it is a key aspect of such control and licensing law will always be part of a holistic approach to the management of the evening and night-time economy in town and city centres.

Risk and Opportunity Management Implications:

- 5.6 The Licensing Act provides necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting licensed premises of entertainment.

Corporate / Citywide Implications:

- 5.7 The leisure industry can contribute to the regeneration of areas that need the increased investment and employment opportunities that a thriving and safe night-time economy can bring.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 This report was required by full Council.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 The functions of the licensing and planning authorities are separate.

SUPPORTING DOCUMENTATION

Appendices:

1. Notice of Motion – Responsible Licensing

Documents In Members' Rooms

1. Health Impact Assessment – flexible alcohol licensing hours in Brighton & Hove

Background Documents

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