

Legal Addendum to Statement of Licensing Policy Consultation

The aim of this legal addendum is to address concerns which have been expressed regarding the lawfulness of the policy proposed.

1. Process and evidence.

The Council has followed the steps to a special policy summarised at 13.28 of the Secretary of State's Guidance and set out at 3.4 of the report. The Council's first Special Policy to address Cumulative Impact was adopted by full council on the 13th March 2008. That policy in addition to a Cumulative Impact Zone (CIZ) also created the 2 special stress areas (SSA's) which it is now proposed to include within an expanded CIZ. The current licensing policy at 2.6.14 states that *The Licensing Authority will keep the CIZ and the SSA's under review. Should the authority find that problems of crime and disorder or nuisance are not improving, or are worsening, the Special Policy will be reviewed with a view to bringing the SSA's into the CIZ.*

The process leading to this point starting with Full Council on the 17th December 2010 has been characterised by the residents living in the current SSA's - Brunswick and Adelaide and the North Laine area calling for their areas to be included within an expanded CIZ due to the problems they have experienced of public nuisance and crime and disorder associated with a significant number of licensed premises concentrated within their area. At full Council on the 24th March 2011 a petition was received from 371 residents concerned about the saturation of licensed premises in Brunswick and Adelaide. In the licensing Strategy group, the North Laine Community Association (NLCA) have consistently requested to be included within the CIZ due to the problems they experience of late night noise and nuisance.

The Licensing Committee on the 23rd June 2011 then considered documentary evidence and heard submissions from Chief Inspector Nelson, Annie Sparks EH manager and Mrs Lawson from Public Health. Their evidence and views are detailed in the minutes and they supported the recommendation to incorporate the SSA's into the CIZ. They also identified a number of problems and trends which are causing concern notably problems associated with pre-loading, street drinking, the availability of cheap alcohol and price competition. The formal consultation process required by the Licensing Act took place and is described in the report. There was broad support for the proposals with the notable exception of the Brighton and Hove Licensees Association (BHLA). Appropriate weight should be given to the views of the consulted.

2. National Guidance and Policy.

The requirement in the Licensing Act 2003 Section 4 is for the authority to have regard to guidance issued by the Secretary of State. This does not mean that it must always be followed to the letter but that if departed from this should be for good reason. Philip Kolvin QC has endorsed this view. In 2010 he gave a national series of licensing policy master classes. He dealt with what policies could contain and the relationship with national guidance, and commented directly on some of the issues raised by the BHLA in their submission. 2 main issues have been raised.

Firstly, in relation to the guidance which at 13.33 states: *It would normally not be justifiable to adopt a special policy on the basis of a concentration of shops, stores or supermarkets selling alcohol for consumption off the premises. Special policies will usually address the impact of a concentration of licensed premises selling alcohol for consumption on the premises.* Philip Kolvin comments on this paragraph and considers that it would be lawful to adopt a policy in relation to off-licences as a departure from guidance e.g. where there is evidence of price competitive behaviour linked to street drinking, proxy purchasing and pre-loading. Of course once a policy is adopted it can apply to all premises and our policy specifically singles out off-licences as they can contribute to all those things just stated. The evidence given in the recent Sainsbury's appeal bore this out. However in our case it is not proposed to adopt this policy on the basis only of off sales. An analysis of all the responses and evidence forming the basis of the proposal, leads to a conclusion that any expansion is based on the cumulative effect of all licensed premises while accepting that different types of premises contribute to cumulative impact in different ways, a fact recognised by the Guidance at 13.34. It is not correct to say that a CIZ must only be based on a concentration of on-licences; the guidance says usually. The picture in Brighton and Hove is a complex one.

Secondly the guidance states at 13.37 that *A special policy relating to CI cannot justify and should not include provisions for a terminal hour in a particular area. For example, it would be wrong not to apply the special policy to applications that include provision to open no later than, for example, midnight, but to apply the policy to any other premises that propose opening later. Etc.* It has been alleged that allowing a pub to open until 11pm is in direct conflict with this section. This is not accepted. In Philip Kolvin's view, this may act disproportionately against premises which could not possibly add to CI e.g. a restaurant wanting to open until 11pm. So that therefore, an authority might for good reason indicate that the policy will not be

taken to apply to certain activities up to x pm as a departure from the guidance. In our case the reason for including a pub until 11pm may be that we consider it is more proportionate for policy to look favourably upon pubs up to 11pm rather than have a policy of absolute refusal as it has emerged from all the evidence and responses that a pub up to 11pm is not likely to add to cumulative impact in the area. This approach would seem to be supported by many responses and those in relation to the Matrix and also that of the police both in their submission to the previous committee and the presentation which is reflected in the minutes. Apart from the issue with the guidance the BHLA would also seem to support a general policy in favour of small independent operators in the on-trade.

A matrix approach to licensing within a policy has been endorsed by Philip Kolvin QC. It provides a carefully constructed pattern of what the licensing authority would like to see within its area and gives an indication to those making applications.

The primary consideration of the licensing authority is to promote the 4 licensing objectives and the licensing policy should reflect this duty. Due regard has been given to the National Guidance in proposing and drafting this policy. Brighton and Hove has a complex and in many ways unique picture. It is this local picture and experience which should shape the licensing policy and in turn the policy will reflect this and where necessary and for good reason may depart from the national guidance. Subject of course and always to each case being considered upon its merits.

3. Amendment to recommendations:

The Statement of Licensing Policy has been amended to take account of the proposed changes to the policy and the revised policy is appended to the papers. A further recommendation is necessary in order for Council to approve the amended policy. It is therefore proposed that there be additional recommendations to read:

“2.3 That Council approves and adopts the amended the Statement of Licensing Policy as shown in the appendix to this report;

2.4 that the amended policy comes into force on the 20th December 2011;

2.4 that the Head of Regulatory Services be authorised to make any necessary minor and consequential amendments to the policy prior to publication.”

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