





**Brighton & Hove
City Council**

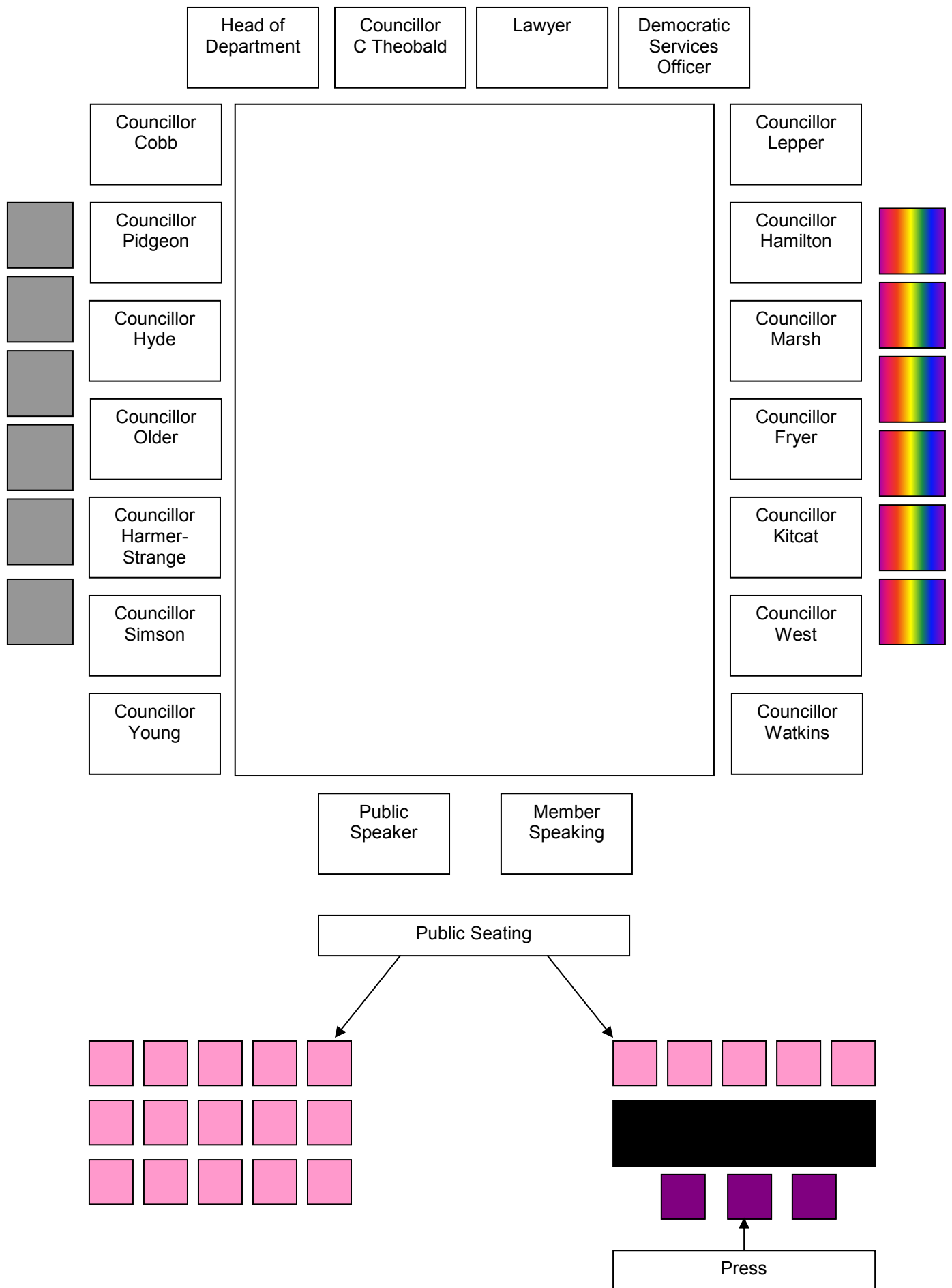
Licensing Committee

(Non-Licensing Act 2003 Functions)

Title:	Licensing Committee (Non Licensing Act 2003 Functions)
Date:	24 April 2009
Time:	3.00pm
Venue	Council Chamber, Brighton Town Hall
Members:	Councillors: C Theobald (Chairman), Lepper (Deputy Chairman), Mrs Cobb, West, Hamilton, Harmer-Strange, Hyde, Kitcat, Marsh, Older, Pidgeon, Simson, Watkins, Fryer and Young
Contact:	Jane Clarke Democratic Services Officer 01273 291064 jane.clarke@brighton-hove.gov.uk

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Democratic Services: Meeting Layout



AGENDA

27. PROCEDURAL BUSINESS

- (a) Declaration of Substitutes - Where Councillors are unable to attend a meeting, a substitute Member from the same Political Group may attend, speak and vote in their place for that meeting.
- (b) Declarations of Interest by all Members present of any personal interests in matters on the agenda, the nature of any interest and whether the Members regard the interest as prejudicial under the terms of the Code of Conduct.
- (c) Exclusion of Press and Public - To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

NOTE: Any item appearing in Part 2 of the Agenda states in its heading either that it is confidential or the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.

A list and description of the categories of exempt information is available for public inspection at Brighton and Hove Town Halls.

28. MINUTES OF THE PREVIOUS MEETING

1 - 4

Minutes of the meeting held on 5 February 2009 (copy attached).

29. CHAIRMAN'S COMMUNICATIONS

30. CALLOVER

NOTE: Public Questions will be reserved automatically.

31. PUBLIC QUESTIONS

(The closing date for receipt of public questions is 12 noon on 17 April 2009).

No public questions received by date of publication.

32. DEPUTATIONS

5 - 8

Deputation concerning the obstruction of pavements - Mr T Chavasse (Spokesperson).

LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

33. IMPROVEMENTS TO ACCESS ON PUBLIC HIGHWAYS PAVEMENTS 9 - 26

Report of the Director of Environment (copy attached).

Contact Officer: Ian Denyer Tel: 29-2065

Ward Affected: All Wards;

34. STREET TRADING - DESIGNATION OF STREETS 27 - 32

Report of the Assistant Director of Public Safety (copy attached).

Contact Officer: Jean Cranford Tel: 29-2550

Ward Affected: All Wards;

35. STREET TRADING POLICY 33 - 46

Report of the Assistant Director of Public Safety (copy attached).

Contact Officer: Jean Cranford Tel: 29-2550

Ward Affected: All Wards;

36. ITEMS TO GO FORWARD TO COUNCIL

To consider items to be submitted to the 30 April 2009 Council meeting for information.

In accordance with Procedural Rule 24.3a the Committee may determine that any item is to be included in its report to Council. In addition each Minority Group may specify one further item to be included by notifying the Chief Executive by 10.00am on 20 April 2009 or at the conclusion of the Committee meeting.

LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

The City Council actively welcomes members of the public and the press to attend its meetings and holds as many of its meetings as possible in public. Provision is also made on the agendas for public questions to committees and details of how questions can be raised can be found on the website and/or on agendas for the meetings.

The closing date for receipt of public questions and deputations for the next meeting is 12 noon on the fifth working day before the meeting.

Agendas and minutes are published on the council's website www.brighton-hove.gov.uk. Agendas are available to view five working days prior to the meeting date.

Meeting papers can be provided, on request, in large print, in Braille, on audio tape or on disc, or translated into any other language as requested.

For further details and general enquiries about this meeting contact Jane Clarke, (01273 291064, email jane.clarke@brighton-hove.gov.uk) or email democratic.services@brighton-hove.gov.uk

Date of Publication - Thursday, 16 April 2009

BRIGHTON & HOVE CITY COUNCIL

LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

3.00PM 5 FEBRUARY 2009

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillors C Theobald (Chairman), Lepper (Deputy Chairman), Mrs Cobb, Fallon-Khan, Fryer, Hamilton, Hyde, Kitcat, Marsh, Older, Pidgeon, Simson, Watkins and West

Apologies: Councillors Harmer-Strange and Young

PART ONE

20. PROCEDURAL BUSINESS

20a Declarations of Substitutes

20.1 There were none.

20b Declarations of Interest

20.2 Councillor Fallon-Khan declared that he was substituting for Councillor Harmer-Strange.

20c Exclusion of the Press and Public

20.3 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).

RESOLVED – that the press and public be not excluded.

21. MINUTES OF THE PREVIOUS MEETING

21.1 **RESOLVED** – that the minutes of the previous meeting held on 27 November 2008 be approved and signed by the Chairman as a correct record.

22. CHAIRMAN'S COMMUNICATIONS

22.1 The Chairman updated the Committee that since the last Licensing Committee (Non Licensing Act 2003) Officers in the Hackney Carriage Office have suspended four drivers and revoked the licence of two drivers. In addition to this, one driver was reminded of his licence conditions.

It was noted that in January Officers took part in a joint operation with Sussex Police which resulted in 47 vehicles stopped, and several penalty notices issued. In all there were 11 drivers suspended.

22.2 Councillor Cobb asked for further details and stated that she was concerned that drivers were being suspended over the Christmas period because of drink driving offences. She was also concerned about rumours that drivers were swapping or lending licences to other non-licensed drivers.

22.3 The Licensing Manager addressed the Committee and stated that none of the suspensions had been due to drink driving and all were for medical reasons. The two licences that had been revoked were also for medical reasons.

22.4 The Head of Environmental Health and Licensing stated that the joint operation with Sussex Police was a success and would encourage higher standards in the taxi service. He stated that incidents of unlicensed drivers were incredibly rare and the badges had been changed five years ago to ensure that this practice would be stopped.

He noted that any rumours of this still taking place might refer to the fact that some vehicles have several drivers using them, and in some instances the badge of the previous driver might be left on display by accident after the drivers had changed shifts.

22.4 Councillor Lepper felt that it was worrying that so many drivers were being suspended for medical reasons. She felt that the Brighton & Hove fitness requirements for taxi drivers were extremely high and the strict conditions posed problems for drivers with on going medical conditions.

23. PUBLIC QUESTIONS

23.1 There were none.

24. POLICING AND CRIME BILL

24.1 The Head of Environmental Health and Licensing presented a report on the Policing and Crime Bill as it related to the Licensing Committee (Non Licensing Act 2003 Functions) and stated that since the Constitution had changed, work on examining this bill would now be conducted by the Licensing Committee.

24.2 Councillor Lepper welcomed the provisions of the new bill and stated that it was a success for Local Authorities who were concerned about the proliferation of this type of establishment, which could not be controlled by the Licensing Act 2003. She noted concern over the fact that it was not mandatory however, and that it did not cover

venues such as pubs, where events may be organised intermittently or on a casual basis. Councillor Lepper recognised that such venues would have to apply for, or already have provision for, dancing on their licence however.

- 24.3 Councillor Cobb felt cautious about adopting provisions to control this type of establishment and noted that Westminster City Council was not intending to adopt the bill. She noted that Brighton and Hove already had a nudist beach and was a popular resort for hen and stag parties. She felt that provision for adult entertainment was necessary for the continued economic health of the city and believed that controlling the number and location of these establishments could detrimentally affect the tourist trade.
- 24.4 Councillor Kitcat welcomed greater control of these establishments and noted that existing ones were already causing problems in his ward. He recognised the effects of the provisions in terms of the tourist trade, but noted that hen and stag party activities were exempt from the provisions. He asked whether a new working group would be formed to look into this issue further, and asked whether the funding that had been ring fenced to investigate the Private Members' Bill would be used for the work on the Public Bill.
- 24.5 The Head of Environmental Health and Licensing stated that the Licensing Committee would take on the work of the cross-party working group and would refer any recommendations as a result of that work to Council for adoption.

The funding that was originally set aside for investigation and implementation of a Private Members Bill was not in the control of the Head of Environmental Health and Licensing and he stated that as the Bill was now public, any costs incurred could be absorbed into the relevant current budget of the Committee or the department.

- 24.6 Councillor Hyde expressed concern over the Public Bill and felt that it was incomplete. The Head of Environmental Health and Licensing stated that it was too early to tell what provisions the final act would contain and noted it would be prudent to stay neutral for the time being. He noted that the department received very few complaints about existing sex establishments in the city and their licences could be reviewed in the usual way if they were creating problems for a local area.
- 24.7 Councillor Simson stated that initial concerns over the proliferation of sex establishments in the city had not been borne out over recent years, and as the Bill was no longer a Private Members Bill the costs for investigation and implementation would be reduced. She felt that it was prudent therefore to use the original funding elsewhere.
- 24.8 **RESOLVED** – that the Licensing Committee (Non Licensing Act 2003 Functions) agrees the recommendations in the report.

25. LICENSING ENFORCEMENT POLICY

- 25.1 The Head of Environmental Health and Licensing presented a report on the Licensing and Enforcement Policy as it related to the Licensing Committee (Non Licensing Act 2003 Functions) and stated that as central government had changed various codes of enforcement and a new Corporate Enforcement Policy had been introduced in October

2008 it was recommended that the Licensing Enforcement Policy be changed to reflect this. A draft policy for consultation was set out at appendix C.

25.2 **RESOLVED** – that the draft policy, as set out at appendix C of the report, be used as a consultation document for the drafting of a new Licensing Enforcement Policy.

26. ITEMS TO GO FORWARD TO COUNCIL

26.1 There were none.

The meeting concluded at 3.45pm

Signed

Chairman

Dated this

day of

LICENSING COMMITTEE

(Non Licensing Act 2003 Functions)

Agenda Item 32

Brighton & Hove City Council

Subject: *Deputation Received from Council*
Date of Meeting: *24 April 2009*
Report of: *Acting Director of Strategy & Governance*
Contact Officer: Name: **Jane Clarke** Tel: **29-2065**
E-mail: jane.clarke@brighton-hove.gov.uk
Wards Affected: All

1. DEPUTATION RECEIVED FROM FULL COUNCIL

1.1 To receive the following deputation presented at Council on 19 March 2009.

1.2 (a) Deputation concerning the obstruction of pavements

Mr T Chavasse (Spokesperson)

Regulations covering 'A' Boards, Display of Goods & Outdoor Facilities on the Highway.

Introduction.

A' Boards and Displays of Goods on the Highway can be a fashionable way for businesses to promote and display their goods in and around town centres, adding to the colour and atmosphere of some street scenes for residents and visitors alike. Similarly furnishings may add to the streetscene through the provision of Outdoor Facilities for suitably located food and drink establishments. However, unless Licensed they are illegal and always subject to Enforcement process.

Under the Highway Act 1980, *and City Council Policies*, Licences are required for 'A' Boards, the Display of Goods and Outdoor Facilities on the Highway. This is to ensure that they are properly set up, licensed and operated so that commercial benefits to some businesses, and changes to the shopping area, do not cause any problems for other premises or users of the street - or adversely affect the streetscene. Among significant factors in determining Applications are the available safe space alongside the juxtapositions of different licensed areas, and types of Licence, to each other and to street & utilities furniture, tactile paving, dropped kerbs, junctions, pavement edges and to private land The City Council takes seriously the discharge of its duties to all Highway users and its specific duties to those who are disabled. Which take precedence over commercial advantage. Moreover, statutory duties within Conservation Areas and towards Listed Buildings have to be considered alongside controls upon advertising. All of which attention increases safe and pleasant footfall to encourage business for all.

- **The grant of a licence for any of the above does not confer or**

modify any rights or conditions attached to other forms of licence – for example, those governing the consumption of alcohol.

- **In some cases an appropriate health and safety risk assessment may be required.**

Requirements for Applying for a Licence

'A' Boards, Goods, Outdoor Facilities not fully set on private land must be licensed. Articles set on private land may be subject to other regulations, and Planning requirements. They are considered when Applications are made and the private area is excluded in measurement of available pavement space.

There is a presumption that A Boards will only be displayed directly adjacent to the Applicant's premises and that where private forecourts exist they provide sufficient opportunity for such advertisements, without licence fees, provided they conform with all other legislative or *Code of Practice* requirements. Remoter A Boards, usually for premises in side streets and thus often at the nearest corner, create additional hazards and supervision difficulties. Corners are particularly dangerous places and such locations are usually unsuitable. If approved the required evidence of Indemnity may be increased and special conditions may be applied. If additional hazards arise thereafter, including from evident lack of supervision, the Enforcement Procedure for Removals will be reduced to that applicable to gross breach of the conditions of the licence including immediate removal.

The five main areas taken into account, which in effect encourage more safe trade in that street, are :

- The amount of space that will be removed from the public highway and its location in relation to other pavement installations & facilities, including cumulative and obstructive impact upon all users but especially disabled persons, wheelchair users, the elderly and family groups.
- How the proposed 'A' Board, Goods, Outdoor Facilities will appear when set up.
- The effect they may have on local residents, workers, shoppers, visitors and passers by.
- Is a proposed 'A' Board in a Conservation Area or a street where A Boards are prohibited ?
- Evidence, and maintenance, of public liability insurance of £5 million will be required.

Consultation

Upon receipt of an application, (*See link to Form and Fees*) a range of City Council Departments and organisations may be consulted to ensure that the proposal is acceptable to them. They include:

- The Access Officer · Planning and Conservation.(Planning Consent(s) may be required)
- Town Centre Management · Legal Services · Environmental Health · Local Councillors
- Waste Management · The Police · East Sussex Fire and Rescue and Ambulance Services
- Representative Residential and Trading Groups for the location*.

· Representative Groups for Disabled persons. · The Older People's Council

- ★ A public notice giving location details will also be displayed close to the site so that local people can comment. Comments will be considered when determining the Licence.

Licence conditions

Each application is considered on its merits and its suitability to the local environment. When a licence is granted, the licence holder must adhere to conditions set out in this guide, unless different to those on the licence itself, otherwise the City Council will have no choice but to remove any article causing an obstruction and may consider taking away the licence. See *link to Enforcement procedure*.

The Council appreciates that people will want to ensure attractive displays that will encourage potential customers to enjoy their business offer without detriment to other trade, the streetscene or free passage.

The following factors are thus among those to be taken into account when planning the layout:

- Available space · Public Highway Pavement width · Carriageway density of usage and junctions · Pavement densities of use · Existing Council street furniture e.g. benches, planters, & utility Company facilities, & other 'A' Boards, Goods or Street Cafes & Inns nearby
- Type of premises & style proposed · Street character including Conservation Area and Listed Building characteristics · Residential properties: access and nuisances · Certain types of business premises that require minimal disturbance or special access.
- People passing the premises should have at least 2 metres of clear footway between the edge of the carriageway and the 'A' Board or the boundary of the Goods or Outdoor Articles when in use or displayed. Existing street furniture and utilities apparatus shall not be included within the 2 metres free space. In a very busy street, it may be necessary to leave more than 2 metres of footway space for pedestrians. Special consideration is given to Pedestrianised streets.
- The 'A' Board, Display of Goods or Outdoor Facilities should be located immediately outside the front of the applicant's building. Where adjacent land is private only permitted unlicensed facilities are preferred. Such displays will be taken into account when licences for additional A Boards are applied for so that the cumulative effects are taken into consideration. Only in exceptional and temporary circumstances justifying a special advertisement will additional A Boards be permitted outside the forecourt areas that contain conforming unlicensed A Boards.

The display positions of all A Boards on the Applicant's adjacent land are to be shown on the location plan. It will be assumed in consideration of a licence, and a condition of any licence, that an Applicant who declares no such existing boards at the time of the Application will not display additional Boards on adjacent private forecourt land during the validity of a licence.

Licensees will be provided with a sticker, to display in a window and / or on an 'A' Board, to show that they have a licence. If not displayed, the owner may be served with a notice to remove the items.

This is a précis of a six page document which gives reference data.* It provides a firm basis for an urgent consultative review of Brighton & Hove's complained of current practices and consultation methods regarding Pavement Obstructions * Available from ConsultConserve @aol.com

2. RESPONSE FROM COUNCILLOR MRS THEOBALD, CHAIRMAN OF LICENSING COMMITTEE

- 2.1 Councillor Mrs Theobald stated, "Thank you very much for this deputation which contains interesting information on control of placements on the highway. As you may be aware changes are currently being proposed to the licensing system which aims to increase accessibility and introduce additional controls over traders' placements on the highway in line with the Disabled Discrimination Act requirements. These proposals will be placed before a Licensing Committee shortly and the council believes they are a necessary improvement. However, as a result of the consultation on these changes Members and officers are proposing a more lengthy review over the coming year which will look into greater depth at the opinions and options of this subject and will include representations from all interested parties. This review will result in recommendations for future changes to the licensing system."

The Mayor thanked Mr. Chavasse for attending the meeting and speaking on behalf of the deputation. He explained that the concerns had been noted and the deputation would now be referred to the Licensing Committee for consideration. The persons forming the deputation would be invited to attend the meeting and would be informed subsequently of any action to be taken or proposed in relation to the matter set out in the deputation.

LICENSING COMMITTEE
(Non Licensing Act 2003 Functions)

Agenda Item 33

Brighton & Hove City Council

Subject: *Improvements to access on Public Highway Pavements (Highway Licensing)*

Date of Meeting: *24 April 2009*

Report of: *Director of Environment*

Contact Officer: Name: **Ian Denyer** Tel: **29-2065**

E-mail: ian.denyer@brighton-hove.gov.uk

Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report is the result of an ongoing review of the council's street licensing system. The review stems from concerns over the effect an increasing number of traders' items (advertising boards, tables and chairs etc.) is having on highway users, particularly disabled people.

Existing policies and procedures go some way to addressing these concerns, but a number of changes have been felt necessary to both meet present challenges and comply with the council's duties under legislation. Recent measures include the limiting of officers' discretionary use of delegated authority under the Highways Act 1980 and alterations to standard licence conditions.

This report submits certain measures for consideration, with a recommendation that they be adopted as city-wide policy.

It is believed that the recommendations will help improve access and safety for all highway users and better reflect the Department For Transport's Mobility Guidance and Disability Discrimination Act 1995 (DDA).

2. RECOMMENDATIONS:

That the Committee note the conditions at Appendix 3 and agree the following as policy in relation to traders' items placed upon the public highway.

- 2.1 That no licensed traders' items should be permitted to reduce the width of a footway to less than 1.3 metres 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
- 2.2 That where a footway is reduced to a width of 1.3 metres (or less) by objects (whether these objects be traders’ items or 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 metres in length and shall be the full width of the footway. Such areas must be maintained at intervals of no more than six metres along the length of any restricted footway.
- 2.3 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 five metres 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.
- 2.4 That where an application is refused by officers, an applicant may appeal to the Licensing Sub-Committee (The Licensing Panel).

3. RELEVANT BACKGROUND/CHRONOLOGY OF KEY EVENTS:

3.1 Officers believe that change is necessary if the council is to meet its legal obligations under the DDA. The measures outlined are based upon legal advice and DfT Guidance (see 5.2 below for legal Implications and **Appendix 1** for DfT pavement width guidance).

3.2 Chronology of Key Events:

This review is the culmination of a process of development of the Street Licensing System to meet changing circumstances, legislation, legal advice and the needs of service users.

Until 2009 officers’ delegated powers allowed them to issue licences for traders’ objects based upon their own discretion and DfT Guidelines.

In these circumstances, and in line with the policy for other placements by the public/businesses permitted by the council (such as domestic wheelie bins) officers could issue licences that allowed pavements to be restricted to the minimum width of 1metre as set in DfT Guidelines (note however that, in most cases, officer-generated licence conditions ensured that this minimum width was in fact exceeded).

Because of concerns over highway access, and following legal advice, the above officer discretion was reduced for licensing year 2009-2010, so that junior officers could no longer issue licences that would allow a narrowing of the pavement to less than 1.3 metres.

This report allows the Committee to consider the adoption of this 1.3m. minimum, plus the other measures above, as general policy. It is thought that adopting these measures would establish a fixed base-line from which officers can work when considering licence applications and which traders will find simple to understand. It is also believed that for Committee to adopt the measures as standard policy now would reduce the number of appeals to Committee/Panel that might otherwise arise.

The following is a summary of events. See **Appendix 2** for a more detailed chronology.

1997 - 2001: Licensing of traders' items largely limited to tables and chairs.

2001: Creation of specialist Highway Licensing Officer post.

2001 - 2003: Period of experimentation and consultation. Expansion of licensing scheme. Establishment of "Old Town" licensing zone, covering all traders' items.

2003: Setting up of Highway Enforcement Team to deal with licensing and enforcement. Expansion of licensing zones.

2005: Highway Enforcement Team produces "Street Clutter" Report and organises experimental, multi-agency joint-action operations in North Laine.

2007-2009: Expansion of licensing zones. Strategic system review recommended by officers, Scrutiny Panel & others.

3.3 **Considerations:**

The council is permitted to licence objects upon the public highway under the terms of the Highways Act 1980 and has a duty to fairly consider all applications made under said Act.

3.4 **Impact of the recommended measures:**

- 3.4.1 **General:** These measures will lead to clearer footways in narrow streets, improving access for all. They will also make enforcement easier for council staff and other agencies by providing clear, city-wide guidelines.

Clearer, city-wide rules would also clarify the licensing situation for interested members of the public and service user groups.

In conjunction with revised licence conditions (to be applicable from April 2009, see **Appendix 3**) the changes will also help simplify matters for licensees.

3.4.2 **Impact on traders: It is estimated that around 20% of existing licensed sites will either be unable to place items on the highway or will have their existing licensed areas reduced under the criteria.** Appendix 4 gives a rough breakdown of those roads in the centre of Brighton likely to be most affected.

3.4.3 **Impact on Council income:** The measures are likely to reduce income to the council by approx. £4,000.00 per annum. However, adopting the recommendations will slightly lessen the amount of time currently spent in administrating the system, freeing up staff to deal with other statutory duties, including enforcement of regulations.

4. CONSULTATION:

4.1 Federation of Disabled People, Brighton & Hove Older Peoples' Council, Rottingdean Parish Council, selected residents' & traders' associations and existing licensees were apprised of proposals and invited to comment (Dec. 08 to March 09).

The written responses received are contained within **Appendix 5**.

5. FINANCIAL AND OTHER IMPLICATIONS:

5.1 Financial Implications:

Revenue

It is estimated that a reduction in the number of permissible sites in the City will reduce income to the Highway Licensing System by approximately £4,000 per annum. There are no other known financial implications.

Capital

There are no known capital implications.

Finance Officer Consulted: Karen Brookshaw Date: 16/01/09

5.2 Legal Implications:

Section 130 of the Highways Act 1980 imposes a duty on highway authorities to assert and protect the rights of the public to the use and enjoyment of the highway. This duty will include a duty to prevent, as far as possible, the obstruction of highways.

However, Part VIIA of the Highways Act (sections 115A – 115K) allows highway authorities carry out works or place objects on the highway, or permit others to do so, for purposes of enhancing the amenity of the highway and its immediate surroundings, or of providing a service for the benefit of the public or a section of the public. It is under s115E that the Council is empowered to grant licences for the placing of A boards in the highway provided the consent of the relevant frontagers has been obtained.

By virtue of section 21B (1) of the Disability Discrimination Act 1995 (“the DDA”) it is unlawful for a public authority to discriminate against a disabled person in carrying out its functions. For the purposes of s21(B) (1) a public authority discriminates against a disabled person if, for a reason which relates to his or her disability, it treats a person less favourably than it treats or would treat others to whom that reason does not apply and cannot show that the treatment is justified in certain prescribed circumstances.

The licensing of A boards is a Council function under section 21B and a potential claim of discrimination could arise. Moreover, under section 21(E) of the DDA, where a public authority has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons to receive any benefit that is or may be conferred; or is unreasonably adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected – the authority has the duty to take steps as reasonable in all the circumstances of the case to change the policy, practice or procedure so that it no longer has that effect.

Section 49A of the DDA imposes a general duty on the Council as a public body to (inter alia) eliminate discrimination that is unlawful under the Act and to promote equality of opportunity between disabled persons and other persons.

The recommended changes to the Council’s licensing policies have taken into account the above legislation and it is considered that, if adopted, the new policies will enable the Council better to comply with its duties under the same.

The Council is also obliged to publish a Disability Equality Scheme. The Department of Transport produced Guidelines in November 2002 which although they do not have legal status do set out established best practice. These provide minimum widths to allow people to move down passageways [**Appendix 1 refers**].

Legal Officer Consulted: Hilary Woodward Date: 02/04/09

5.3 Equalities Implications:

The recommendations are changes to existing highway policy and will better reflect the council's Disability Equality Scheme, DfT mobility guidelines and duties under of the DDA than existing measures. An equalities impact assessment has been carried out (see **Appendix 6**).

5.4 Sustainability Implications:

There are no significant implications.

5.5 Crime and Disorder Implications:

There are no significant implications.

5.6 Risk and Opportunity Management Implications:

There are no significant implications.

5.7 Corporate/City Wide Implications:

Surveys indicate that up to 20% of existing licensed sites will be affected by the new provisions. Most of the businesses affected will be small, sole traders in those parts of the city centre subject to highest rates and rents. This could have economic implications for the city, but it is felt by officers that the needs of mobility and visually impaired people and the council's legal obligations must prevail over these concerns.

SUPPORTING DOCUMENTATION

Appendices:

1. Department for Transport pavement width guidelines.
2. Detailed chronology of events.
3. Standard licence conditions (to apply to standard licences from 1st. April 2009).
4. Roads most affected by the measures.
5. Comments from consulted parties.
6. Equalities Impact Assessment.

Documents in Members' Room:

1. Appendices 5 to 6.

Background Documents:

1. N/A.

Appendix 1: Department for Transport Guidelines:

The measures reflect officer opinion and legal advice regarding the council's duties under the Disability Discrimination Act and the application of the Department for Transport's Mobility Guidance. The Department for Transport produces guidelines which, although they do not have legal status in the sense of being Law, do set out what may be regarded as established best practice. As well as improving matters for service users, working to these guidelines would reduce the validity of challenges to the council regarding the placement of traders' items.

Section two of the DfT guidance acknowledges appropriately the diversity of the population of people who are encompassed by the legal definition of disability. It not unreasonably concentrates for the purpose of this document on people who are mobility impaired and visually impaired people (including the elderly frail. The guidance provides the following minimum widths to allow people to move down passageways:

Situation involving disabled person	Minimum width recommended in DfT guidelines
A person without a walking aid	700mm
A person with a walking stick	750mm
A person with a walking stick, crutches or walking frame	900mm
A blind person using a long cane or assistance cane	1100mm
A person who is guided	1200mm
A wheelchair user and an ambulant person side by side	1500mm

The DfT guidance (Section 3) deals with footways and pedestrian areas and gives four distances by way of standards:

Circumstances	Minimum width recommended in DfT guidelines
Normal circumstances	2000mm
Minimum acceptable under most circumstances	1500mm
Absolute minimum	1000mm
Maximum length of restricted width (of any obstruction).	6m

Appendix 2: Chronology & Relevant Data.

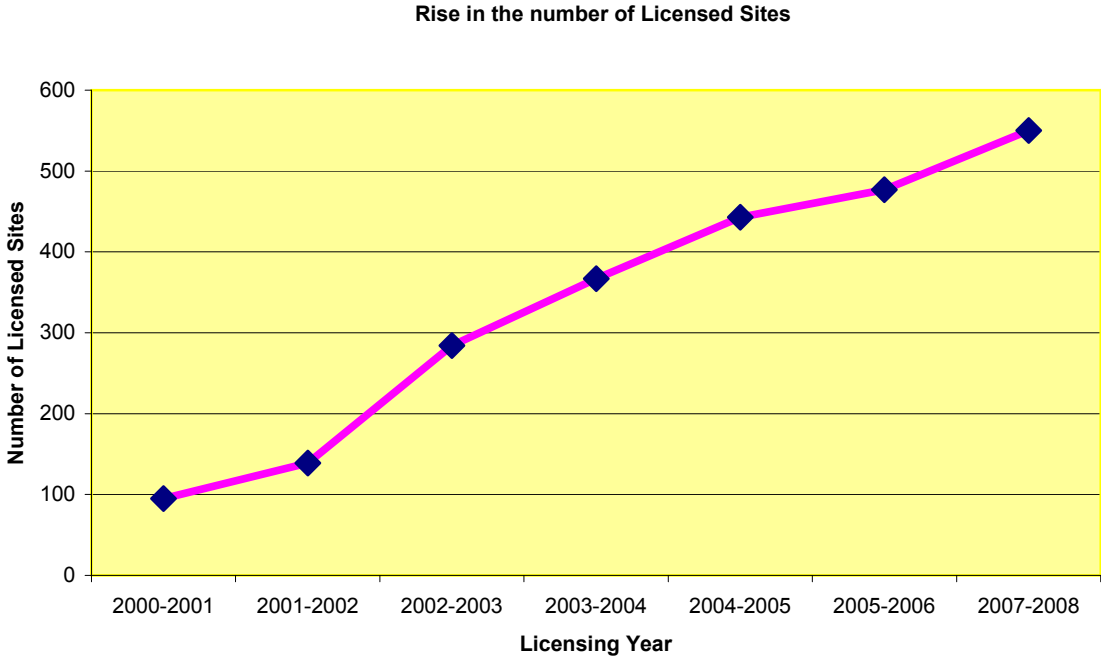
Below is a chart showing the changes that have contributed to the need for a review of procedure/policy. They consist of a history and data which have influenced the recommendations themselves.

Year	Chronology of Significant events
1997 to 2001	Licensing policy (based on previously administered East Sussex County Council's policy) adopted by unitary authority. Refers mainly to tables and chairs, with some A-boards and shop displays licensed within Brighton "Old Town". Plans and Traffic section responsible for administration. By 2001 no valid A-board licences were in place.
2001	Responsibility for trader item licensing transferred to a specialist highway licensing officer. At this stage only tables, chairs and some limited displays were licensed by the Council.
2002	Expansion of the above system. Experimental licensing scheme to cover all types of traders' objects set up in George Street, Hove.
2003	<p>The setting up of the Highway Enforcement Team. Scheme to licence all traders' items placed upon the highway in certain areas of the city centre established. This was in effect a revival and expansion of the East Sussex licensing regime previously adopted by Brighton Borough and covering the "Old Town". The intention was that the whole city would eventually be covered by the scheme.</p> <p>Considerable, successful consultation with DAAG and other special interest groups was undertaken during the set-up process, the intention being to establish a practical working compromise that would protect rights of access and use of the highway by businesses while complying with statutory duties with regard access and the DDA.</p>
2003 to date	<p>Expansion of the scheme to take into account the growing needs and activities of traders and the change in character of business within the city (in particular the growth in the number of cafes and bars). It presently covers the whole of Brighton "Old Town", part of Kemp Town, most of Western Road, George Street (Hove), Brunswick & Adelaide and the Rottingdean village centre.</p> <p>During this period consultation with DAAG and other relevant/concerned interest groups continued.</p> <p>Note that available resources have not kept pace with the increase in the number of traders' sites placing items and</p>

	additional duties allocated to the Highway Enforcement Team (see graph below). These factors, and certain legal ambiguities, have limited the spread of the Licensing Scheme and added to current concerns.
2005	<p>Detailed surveys undertaken in Lanes, North Laine and Kemp Town by the Highway Enforcement Team produce a “Street Clutter” Report, recommending a holistic approach to the placing of objects upon the highway. Initiating and organisation of an experimental, multi-agency “clutter reduction” operation in North Laine. Multi-agency action initiated against illegal street traders (Highway Enforcement, Environmental Health, and Sussex Police).</p> <p>Detailed consultation undertaken with North Laine traders, including establishing a preferred layout of items during pedestrian hours.</p> <p>Introduction of domestic wheelie bins (Cityclean) and establishment of 1m. minimum footway width as acceptable within council policy.</p>
2007:	<p>“Street Clutter” report on Brunswick & Adelaide, recommending a holistic approach to the placing of highway objects, prepared and submitted. Representations from interest groups regarding highway access. Deaf/Blind Access Scrutiny Report recommends specialised re-examination of current policy.</p> <p>Policy review delayed by election year and legal queries</p>
2008:	<p>Licensing policy presented to Environment Committee in January 2008 to ensure that officers were working to a current, member-approved policy. No major changes proposed at that stage. Progression of officer review, taking into account political issues, consultation with DAAG, legal queries, challenges from the RNIB and exigencies of the service.</p> <p>Further representations from interest groups regarding highway access. Establishment of Brunswick & Adelaide Licensing Zone.</p> <p>Initial preparation of current Report</p>
2009:	<p>Finalisation of current Report Officer. Additional representations from interest groups regarding highway access. Delegated authority/discretion reduced in line with legal advice.</p>

Change in scale of the Traders' Items issue:

In 2000-2001, when the Highway Enforcement Team took responsibility for licensing and monitoring traders' items placed upon the Public Highway, there were 95 licensed sites across the whole of the City. There are now over 550 such sites. The chart below shows the rise in the number of shop, café and restaurant sites licensed by the Highway Enforcement Team. Licensing resources have not been increased since 2003.



Growth in advertising signs: In 2002 it was estimated that there were about six hundred potentially licensable advertising signs in the city. At present some three hundred premises are licensed to place signs within the Licensing Zones alone (each site being permitted a maximum of two such signs per premises). This figure excludes signs placed by premises with other Highway licences (holders of tables and chairs or shop-display licences). Inside and outside the Zones it is estimated that over two hundred sites remain unlicensed. This means that the number of such signs within the City has grown from approx. 600 to approx. 1,300 within five years.

Appendix 3: Licence Conditions 2009-2010:

The following conditions will be introduced to apply to all highway licences issued or renewed for and from 1st April 2009.

Note that these conditions are not part of the measures under consideration by members but have been set by officers under delegated authority. They are therefore presented for information only.

Terms:

- The term “licence” used below refers to any Highway Permission issued by the Highway Enforcement Team.
- A “licensee” is deemed to be the body or individual to whom the licence has been issued.
- A “licensed area” is that area of public highway covered by the licence.

Legal Issues:

1. This licence is not transferable.
2. Sub-letting of the highway is forbidden. A frontager who is a licensee may, with the advance written permission of the council, permit a suitable third party (i.e. a party the council would consider to be an appropriate licensee themselves) to display items within a relevant licensed area, but there should be no financial transaction associated with such an arrangement. Any third party must meet and comply with all licence conditions, including the holding of Public Liability Insurance (see below). Responsibility for breaches of licence conditions will lie with the licensee.
3. The licensee agrees to indemnify the council against any claims in respect of injury, damage or loss arising out of the grant of the licence. Public Liability Insurance cover of at least one million pounds must be carried for the duration of the licence. Evidence for this cover must be produced on demand.
4. The licence may be suspended or revoked and/or the licensee required to temporarily remove the objects by the council for any legally defensible reason. The licensee shall not be entitled to any compensation for loss of trade or business as a result.
5. If deemed necessary the council may alter licence conditions at any time.
6. Where necessary, the council may place time limits to restrict the use of licensed areas to permitted hours. In general, these restrictions will apply to premises with alcohol licences and will not exceed the hours set by the terms of such licences.
7. Licences are valid for a maximum of 12 months and expire at 24:00 hrs. on the first 31st of March following the date of issue. Licences are subject to an annual review. Payment of licence fees is a condition of the licence.

8. Licences only relate to the placing of objects upon the highway. It is the responsibility of the licensee to obtain all other consents required in connection with the proposed extension of their business onto the highway including, where appropriate, any amendment to their existing liquor licence.
9. It is a condition of highway licences that all consents and permissions, and all health & safety, environmental health or other legal provisions or measures required by Brighton & Hove City Council or other legal authorities, are obtained and adhered to. Proven failure to comply with legislation and/or the reasonable and legitimate instructions of an authorised officer of the Council, Her Majesty's Health & Safety Executive or the Police may be considered a breach of the conditions governing the licence.

Licensed Areas:

1. The council reserves the right to limit the number of items placed within a licensed area. Factors influencing such limits may include the density of tables/chairs within a licensed area and the ratio between the number of covers within the licensed area and those inside the actual premises.
2. Patrons within a licensed area must be seated. Vertical drinking shall not be permitted at any time.
3. Benches or other objects which cannot easily be removed and stored within the licensed premises shall not be permitted unless noted within the original application and agreed in advance and in writing by the council. The council may specify how items left out overnight shall be stored or stacked.
4. Licensees who significantly alter the nature of their items (e.g. the design of seating/tables/barriers) without prior consultation and a written agreement from the council will be deemed to have breached licence conditions.
5. No free-standing items issuing heat or with heated elements (such as gas or electric heaters) may be permitted within a licensed area unless the intention to place such items was noted within the original licence application and agreed in advance and in writing by the council. A Risk Assessment for the use of such items must be submitted with the application
6. The council can insist that licensed areas are surrounded by barrier or fencing. The use and design of all such barriers must be approved in writing by the council.
7. The licensee shall ensure that all glasses, bottles and other debris from the licensed premises are collected and returned to the licensed premises regularly and at the end of each session.
8. The council may require the use of plastic containers only within certain licensed areas.

9. The licensed area must be kept clean, being washed down as necessary, and free of litter at all times. The licensee is responsible for regularly clearing all debris and litter associated with the licensed premises, whether inside the bounds of the licensed area or not.
10. No object may be placed upon the highway outside the licensed area or away from the licensed position at any time. All items must be checked at regular intervals. Areas associated with the consumption of food or drink must be constantly monitored. Items left unattended or found out of sight of the licensed premises may be removed and impounded without warning.
11. The cooking of food within a licensed area is prohibited.
12. Shop displays made up of rows of irregular items (e.g. pots) should ideally have vertical panels of not less than 0.3m height, at the edges & sides so as to provide a regular and continuous tapping board for the guidance of the blind and partially sighted. If necessary the council can make provision of these a special condition of a licence.
13. No goods or food shall be displayed for sale in the highway unless it is evident that such goods are sold as part of the normal business of the licensee. The nature of such displays and the goods for sale must be formally approved by officers and noted within the licence agreement. Where such displays are permitted all sales must take place upon private property. No financial exchanges may take place upon the Public Highway, other than in connection with sitting-out areas.
14. Licensees with display or sitting-out areas will be supplied with a Data Sheet showing the extent of the highway licensed to them. This document must be kept on site and be available for inspection on demand at any time by officers of the council or other agencies, elected members and the general public.

Advertising boards;

1. No more than two advertising boards may be permitted for every two elevations of a licensed premises and the total surface areas of all advertising boards per said elevations (whether on the highway or on private land or decking or on any combination of the same) may not at any time exceed the limits for such advertising under Planning Regulations (a total area of 4.6 square metres).
2. Premises with sitting-out areas may not place advertising boards outside licensed areas unless such placements are separately licensed and conform with all other relevant conditions.
3. Licensed advertising boards shall be between 0.75m and 1.2m high and between 0.5m and 1.1m wide only. Larger or smaller boards will not be permitted.

General:

1. The licensee must clearly display on site a Display Licence provided by the council. This should be placed in a window, glass door or menu stand of the licensed premises clearly be visible and legible from the highway.
2. Anything left upon the highway outside business hours or the hours stated in the licence conditions, or any item found chained or tied to any other object, street furniture or building without prior written permission, may be removed and impounded without further warning.
3. The improper parking of vehicles by staff or persons associated with the licensed site (including delivery vehicles) will be considered a breach of the licence. This is of particular importance within those areas where vehicle access is restricted and in streets that are periodically pedestrianised. In certain parts of the city licensees may be required to agree to restrictions on delivery times.
4. To promote the work of the Brighton & Hove Drug and Alcohol Action Team and support the operations of the Council's Trading Standards Team, licensed sites involved in the sale of cigarettes or of alcohol for off -premises consumption shall be required to display, at all times, such notices relating to illegal sales to or illegal purchase on behalf of minors as may be supplied by the Highway Enforcement Team.

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5. Note that the following general rules will be applied to all officer-approved applications/sites within the city:
 - A) That no licensed traders' items will be permitted to reduce the width of a footway to less than 1.3 metres except where;
 1. 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
 2. 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
 3. a road is considered to be "shared space" and the whole carriageway is generally available for pedestrian use
 4. discretion to allow this has been exercised by Elected Members in Committee or Cabinet, due to special circumstances.
 - B) That where a footway is reduced to a width of 1.3 metres (or less) by objects (whether these objects be licensable traders' items or fixed street furniture such as lamp posts, bins etc.) "turning circles" for manual wheelchair users and guide dogs must be established at regular intervals. These "turning circles" shall not be less than 1.6m in length and must be maintained at least every 6 metres along the length of a restricted footway.
 - C) 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 five metres from the licensed premises or out of sight from a window or door of said premises.

In certain circumstances, officer application of the above criteria may be challenged by means of Formal Appeal to Committee or Cabinet. Such appeals should take place at the licence application stage. Note however that no activities can take place at a site until such a decision is reached.

Enforcement Procedure (removals):

The following enforcement procedure shall be applied as standard for all items placed on the Public Highway in breach of the DfT guidelines and the rules and conditions of the Highway Licensing System as detailed above:

- That on the discovery of a breach of the guidelines, rules and conditions, a written warning shall be issued to the relevant business/person, warning and advising them of their need to abide by the prevailing regulations.
- That on the discovery of a second such breach within eight weeks of the first, a second warning notice be served.
- That on the discovery of a third such breach within eight weeks of the second warning a third warning shall be served

If the recipient of a third warning is a holder of a Highway licence, then this licence shall be temporarily suspended by virtue of said notice, pending consideration of the case by the Senior Highway Enforcement Officer. The period of suspension will be dependent on the seriousness of the breach and the measures taken by the licensee to ensure future compliance with the regulations. Further breaches may result in the rescinding of the licence.

Any unauthorised items found on any site following a third warning or suspension/rescinding of a licence may be removed from the Public Highway and impounded without a further warning being served. Owners of objects so impounded will be given the opportunity to recover their property. Where appropriate a charge may be made by the Council for the costs of removal and storage.

The Council reserves the right to proceed with prosecution under the Highways Act 1980 at any stage of the above procedure in any case involving gross or regular breaches of legislation.

*

Appendix 4: Roads in Brighton centre affected/unaffected by proposed measures.

Road Name	Sites unaffected by 1.3 limit	Sites not allowable under min. width of 1.3m	Comments
Sydney Street	16	10	Mainly small, sole traders affected, including some long-term licensees.
Kensington Place	5		No sites affected
North Road	5	7	Mainly a-board sites affected. Mixed business types.
Gloucester Road	3	11	Mainly a-board sites affected. Mainly sole trader sites.
Gardner Street	6	14	Mainly small, sole traders affected, inc. some long-established table & chair sites.
Church Street	10	4	Mainly a-board sites affected. Mixed business types.
Jubilee Street		1	Road still not adopted, but Carluccio's Jubilee St. elevation would be affected. Piazza not considered.
Bond Street	12	5	Mainly a-board sites affected. Mixed business types.
George S. Btn.	1	6	Mainly a-board sites affected. Mainly sole trader sites.
St. James Street	38	5	Mainly a-board sites affected. Mixed business types.
Manchester Street		3	A-board sites affected.
Duke Street	17		Adjustment of Havana area & some locations necessary. No lost sites.
Ship St./Middle St.	8	7	Victory pub affected at side. Mixed business types.
Prince Albert Street/Bartholomews	7	4	Mainly a-board sites affected. Mixed business types.
East Street/ Pool Valley	19	7	Long-established table & chair site affected, otherwise mainly a-boards. Mixed business types.
Cranbourne Street	5		No lost sites.
Western Road	41	1	A-board sites affected.
Preston Street	20		No sites affected
Air Street	2		No sites affected
West Street	11		No sites affected
Queens Road	18		No sites affected
North St., Princes Pl. & Pavilion Bldgs.	22		No sites affected
Market St./Nile St./Brighton Place	29		No sites affected – pedestrian zone
Kings Road	16		No sites affected
Total	311	85	

LICENSING COMMITTEE
(Non Licensing Act 2003 Functions)

Agenda Item 34

Brighton & Hove City Council

Subject: Street trading – designation of streets
Date of Meeting: 24 April 2009
Report of: Assistant Director Public Safety
Contact Officer: Name: Jean Cranford Tel: 292550
E-mail: jean.cranford@brighton-hove.gov.uk
Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

1.1 Brighton & Hove City Council introduced a street trading policy on 2 April 1998 which was an amalgamation of policies from Brighton Borough Council and Hove Borough Council adopted under the provisions of the Local Government (Miscellaneous Provisions) Act 1982.

2. RECOMMENDATIONS:

- 2.1 That committee authorises officers to publish Notice of Intention to designate streets as set out in appendix 1.
- 2.2 That the committee authorises officers to serve a copy of Notice on Chief Officer of Police and the Highways Authority.
- 2.3 That the committee authorises officers to consult further with existing street traders.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

Current Process

- 3.1 Officers in Environmental Health and Licensing issue permits for street trading (see 3.2 – 3.4). Any appeals against officers decisions are heard by the Licensing Committee (Non-Licensing Act 2003).
- 3.2 Currently, the following are consent streets: Castle Street, Clarence Square, Dean Street, Crown Street and Marlborough Street, Upper Gardner Street, Bartholomew Square, George Street Hove, East Street, Duke Street and Market Street.
- 3.3 There is a designated area (zone B).
- 3.4 There are areas throughout the city in which street trading is prohibited. These areas are generally main thoroughfares or areas in the city centre and run from the

western boundary of Brighton & Hove in Vale Road, Portslade, along Portland Road, Sackville Road, Church Road, Western Road, Montpelier Road, Chatham Place, Viaduct Street, Upper Lewes Road, then southwards down Lewes Road, Albion Street and Grand Parade before heading East along Edward Street, Eastern Road and finishing in Arundel Road.

- 3.5 A meeting was held with Brighton & Hove Albion Football Club regarding street trading in the streets surrounding the new Community Stadium at Falmer. It was agreed that street trading will be prohibited within 1 mile of the Community Stadium, but excluding council owned public spaces, which would remain undesignated.
- 3.6 There are requests for street trading/markets in New Road, Black Lion Street and Jubilee Street.

Commentary on street trading policy

- 3.7 Historically, parks have remained undesignated to allow Leisure officers flexibility permitting outdoor events. The Seafront has been a consent street managed on a day to day basis by Seafront officers. Economic development members and officers are considering corporate market policies and officers are working to ensure corporate market policies and street trading policy work in harmony.
- 3.8 It is proposed to prohibit street trading in the city centre, with the exception of particular streets which may be used in accordance with policy (see report "Street Trading Policy"). Parks, gardens etc would remain undesignated. Street trading would be permitted outside the city centre, known as Zone B.

4. CONSULTATION:

A full and measured consultation will involve residents (including the citizens panel and via the council's website), residents associations and Community Associations including the North Laine Community Association, businesses (including individual street traders) in Brighton & Hove, Police and Highway Authority, Economic Development and Regeneration regarding the corporate markets policy, Tourism, Events Office, Seafront Office (including Seafront Trader Association), Trading Standards, Education Authority (Children's Trust), City Clean, Legal, Finance, Ward Councillors, City Centre and Hove Business Fora, Trader Associations including North Laine Traders Association, Upper Gardener Street Traders Association and the Brighton & Hove Albion Football Club.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

Revenue: Street Trading fees are set at a level that officers reasonably believe will cover the costs of administering the service. Licensing functions should neither be subsidised by the general fund nor raise revenue. The costs of the aforementioned notices will be met within existing Licensing budgets.

Capital: There are no capital implications.

Finance Officer Consulted: Karen Brookshaw

Date: 23/02/09

5.2 Legal Implications:

Section 3 of the Local Government (Miscellaneous Provisions) Act 1982 enables a district council in England and Wales to adopt a code for the regulation and control of street trading within its area. Once Sch 4 to the Act is adopted, a district council may chose to designate any street within its area as a prohibited, licence, or consent street.

Certain types of trading are excluded from the definition of street trading and these traders are not required to obtain a licence or consent to trade on a licence or a consent street. Similarly, a trader falling within the exclusions may trade in a street designated as a prohibited street.

Lawyer Consulted: Rebecca Sidell

Date: 06/04/09

5.3 Equalities Implications:

Diversity is valued and strong, safe communities are vital to future prosperity.

5.4 Sustainability Implications:

Some street trading supports recycling of goods. Farmers markets may reduce "food miles".

5.5 Crime & Disorder Implications:

Transparent, proportional street trading controls minimise danger of obstruction and nuisance. Street trading can be a source of stolen or counterfeit goods.

5.6 Risk and Opportunity Management Implications:

Street trading is a crucial business and employment opportunity and unnecessary regulation might lead to legal challenge.

5.7 Corporate / Citywide Implications:

Street trading represents some traditional, historic heritage of the city. Many characters and activities are interwoven into the city's history.

SUPPORTING DOCUMENTATION

Appendices:

1. Designation of Streets.
2. Map of Street Trading Zones.

Documents In Members' Room:

None.

Background Documents:

None.

APPENDIX 1

Designation of streets:

Previous resolutions by the licensing authority shall be varied as follows:-

Streets south of Vale Road, Portslade, along Portland Road, Sackville Road, Church Road, Western Road, Montpelier Road, Chatham Place, Viaduct Street, Upper Lewes Road, then southwards down Lewes Road, Albion Street and Grand Parade before heading East along Edward Street, Eastern Road and finishing in Arundel Road shall be prohibited streets with the exception of Kingsway, Kings Road and Seafront, Castle Street, Clarence Square, Crown Street, Dean Street, Marlborough Street, Western Road, Upper Gardner Street, Bartholomew Square, George Street Hove, New Road, Black Lion Street, Jubilee Street, East Street, Duke Street, and Market Street which shall be designated consent streets, and the Council's Parks and Gardens which shall be undesignated.

Streets North of Vale Road Portslade, along Portland Road, Sackville Road, Church Road, Western Road, Montpelier Road, Chatham Place, Viaduct Street, Upper Lewes Road, then southwards down Lewes Road, Albion Street and Grand Parade before heading East along Edward Street, Eastern Road and finishing in Arundel Road shall be consent streets, except that the Council's Parks and Gardens will be undesignated.

Street Trading Zones



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Date: 25/10/07 Scale 1:10000

Public Safety



LICENSING COMMITTEE

(Non Licensing Act 2003 Functions)

Agenda Item 35

Brighton & Hove City Council

Subject: Street trading policy
Date of Meeting: 24 April 2009
Report of: Assistant Director Public Safety
Contact Officer: Name: Jean Cranford Tel: 292550
E-mail: jean.cranford@brighton-hove.gov.uk
Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 Brighton & Hove City Council introduced a street trading policy on 2 April 1998 which was an amalgamation of policies from Brighton Borough Council and Hove Borough Council adopted under the provisions of the Local Government (Miscellaneous Provisions) Act 1982.
- 1.2 Brighton & Hove has streets in which street trading is prohibited, it has areas where consent is granted for street trading (e.g. East Street) and there are 5 pitches for street trading in the city centre. The Seafront area including Grand Junction Road and Kings Road is designated a consent street but is outside the trading policy established by the Council and control of that area is the responsibility of the Seafront Office.
- 1.3 Officers obtained permission to undertake consultation to review the entire city's street trading designations and policy from committee on 27 November 2008 and this report outlines the next stage.
- 1.4 Existing standard conditions have been modified to remove imprecise, unenforceable conditions and to assist small businesses which links to corporate priorities.

2. RECOMMENDATIONS:

- 2.1 That committee agrees the street trading policy as set out in appendix 1.
- 2.2 Members consider whether a standard street trading condition should be imposed to exclude traders 25metres from school curtilages.
- 2.3 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.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

Current Process

- 3.1 Officers in Environmental Health and Licensing issue permits for street trading (see 3.2 – 3.4). Any appeals against officer's decisions are heard by the Licensing Committee (Non-Licensing Act 2003).
- 3.2 There are currently 5 designated pitches for street trading in the city centre (Castle Street, Clarence Square, Dean Street, Crown Street and Marlborough Street). All pitches are let and there is a waiting list for traders who would like to take over a pitch if one becomes vacant.
- 3.3 A street market is held each Saturday in Upper Gardener Street between the hours of 07.00 and 17.00. Occasional markets are held in Bartholomew Square and George Street Hove. New Road and Black Lion Street in Brighton need to be authorised for street markets.
- 3.4 Street artists and hot chestnut sellers are permitted to operate in East Street, Duke Street, Bartholomew Square and Market Street.
- 3.5 There are designated areas (zone B) where traders can request a permit for street trading. These are the residential areas outside the city centre.
- 3.6 There are areas throughout the city in which street trading is prohibited. These areas are generally main thoroughfares or areas in the city centre and run from the western boundary of Brighton & Hove in Vale Road, Portslade, along Portland Road, Sackville Road, Church Road, Western Road, Montpelier Road, Chatham Place, Viaduct Street, Upper Lewes Road, then southwards down Lewes Road, Albion Street and Grand Parade before heading East along Edward Street, Eastern Road and finishing in Arundel Road.
- 3.7 A meeting was held with Brighton & Hove Albion Football Club regarding street trading in the streets surrounding the new Community Stadium at Falmer. It was agreed that street trading will be prohibited within 1 mile of the Community Stadium, but excluding council owned public spaces, which would remain undesignated.
- 3.8 There have been requests for occasional markets from the business community in areas such as New Road, Jubilee Street and Black Lion Street.

Commentary on street trading policy

- 3.9 Historically, parks have remained undesignated to allow Leisure officers flexibility permitting outdoor events. The Seafront has been a consent street managed on a day to day basis by Seafront officers. Economic development members and officers are considering corporate market

policies and officers are working to ensure corporate market policies and street trading policy work in harmony.

- 3.10 For members assistance and as reported last time:-
Street trading is selling articles on the street, including exposing or offering articles for sale. It does not include provision of services, like henna tattooing, hair braiding, tarot reading etc.

The following activities are not subject to street trading controls:

- Pedlars, with a pedlar's certificate issued by the Police under the Pedlars Act 1871. These are itinerant traders.
- Markets covered by enactment or order (ancient – none in Brighton & Hove)
- Trunk road picnic areas (none in Brighton & Hove)
- News vending
- Trading at petrol filling station
- Trading on the street adjoining a shop as part of the business of the shop
- Selling things on a round like milk doorstep delivery
- Objects on a highway licensed under highways legislation, like tables and chairs or A boards
- Recreation or refreshment facilities licensed under highways legislation
- Charitable street collections which are subject to separate permissions

Controls only apply to the street or other public places.

It is proposed to continue to permit Upper Gardner Street, city centre stalls, various specialist or occasional markets and seasonal activities like portrait painting and hot chestnut selling but to allow markets in some newly pedestrianised street.

4. CONSULTATION:

- 4.1 A full and measured consultation will involve residents (including the citizens panel and via the council's website), residents associations and Community Associations including the North Laine Community Association, businesses (including individual street traders) in Brighton & Hove, Police and Highway Authority, Economic Development and Regeneration regarding the corporate markets policy, Tourism, Events Office, Seafront Office (including Seafront Trader Association), Trading Standards, City Clean, Legal, Finance, Ward Councillors, City Centre and Hove Business Fora, Trader Associations including North Laine Traders Association, Upper Gardener Street Traders Association Brighton & Hove Albion Football Club, Education Authority (Children's Trust) and the governing body and head teacher of Dorothy Stringer High School (copy attached at appendix 4).

4.2 The Education Authority commented as follows:

“You may be aware of a particular issue we have regarding street traders who operate outside schools, in particular some of our secondary schools. There is an increasing drive towards healthy eating and we have made considerable efforts to improve the school meal offer to encourage pupils to eat more healthily. In some instances this effort is being hampered because of the proximity of street traders running burger and ice cream vans very close to schools. This inevitably encourages pupils to leave the school campus and purchase less healthy food options than for lunch rather than the healthier options that are available in the school dining facilities. This has been raised in the past with officers in the licensing department to see if there is anything that can be done to restrict the ability of these traders from operating in such proximity to schools. Would it be possible as part of this review to consider introducing an ‘exclusion zone’ around the secondary schools in the city to help promote the benefits of healthy eating?”.

4.3 The regulation of street trading by consents covers infrequent, itinerant trading. There is no right of appeal against refusal and so it is vital that licensing authorities behave in a fair and reasonable manner. An established street trader would have a reasonable expectation that his/her consent would continue. Street trading consent regulations’ primary purpose is to prevent obstruction of the street or danger to persons using it, or nuisance or annoyance to people using the street or otherwise. The department promotes diet, health and local food issues including engagement with school children by its healthy awards scheme recently launched. Using street trading regulations to promote healthy food, although appealing, may not be proper use of the Regulatory controls.

4.4 Brighton and Hove Business Forum raised the matter of Jubilee Street but this is private land and therefore not subject to street trading controls.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

Revenue: Street Trading fees are set at a level that officers reasonably believe will cover the costs of administering the service. Licensing functions should neither be subsidised by the general fund nor raise revenue. Any costs associated with the Street Trading Policy will be met within existing Licensing budgets. Fees are set as part of the annual Council budget setting process.

Capital: There are no capital implications.

Finance Officer Consulted: Karen Brookshaw

Date: 23/02/2009

5.2 Legal Implications:

Section 3 of the Local Government (Miscellaneous Provisions) Act 1982 enables a district council in England and Wales to adopt a code for the regulation and control of street trading within its area.

Certain types of trading are excluded from the definition of street trading and these traders are not required to obtain a licence or consent to trade on a licence or a consent street. Similarly, a trader falling within the exclusions may trade in a street designated as a prohibited street.

Lawyer Consulted: Rebecca Sidell

Date: 06/04/09

5.3 Equalities Implications:

Diversity is valued and strong, safe communities are vital to future prosperity.

5.4 Sustainability Implications:

Some street trading supports recycling of goods. Farmers markets may reduce "food miles"

5.5 Crime & Disorder Implications:

Transparent, proportional street trading controls minimise danger of obstruction and nuisance. Street trading can be a source of stolen or counterfeit goods.

5.6 Risk and Opportunity Management Implications:

Street trading is a crucial business and employment opportunity and unnecessary regulation might lead to legal challenge.

5.7 Corporate / Citywide Implications:

Street trading represents some traditional, historic heritage of the city. Many characters and activities are interwoven into the city's history.

SUPPORTING DOCUMENTATION

Appendices

1. Street trading policy.
2. Local Government (Miscellaneous Provisions) Act 1982: Standard Conditions for Street Trading.
3. Clarification/Times of trading.
4. Letter from the Chair of Governors, Dorothy Stringer School.

Documents In Members' Rooms

None.

Background Documents

None.

APPENDIX 1

STREET TRADING POLICY

Consent Street	Purpose
Zone A	
City Centre Static consent sites (Dean Street, Marlborough Street, Castle Street, Crown Street, Western Road, Clarence Square)	General trading
Upper Gardner Street	Saturday market
Bartholomew Square, Dukes Street, Market Street	Hot chestnut and other traditional Christmas trading activity
Bartholomew Square, East Street, Dukes Street, Market Street	Street artists who produce portraits on the street
George Street Hove, Bartholomew Square, Black Lion Street, New Road and Jubilee Street	Occasional markets including ethnic, farmers and crafts etc.
Zone B	
Area outside city centre	Mobile and static traders, both as regular occupation and community events and markets

APPENDIX 2

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 : **STANDARD CONDITIONS FOR STREET TRADING**

- A. The consent may not be transferred and the Trader shall not permit any person to exercise the consent in his/her absence unless that person is employed by the consent holder and is at least seventeen years of age. The consent holder shall not employ more than two persons at any one time to exercise the consent in the absence of the holder and any contravention of the standard conditions forming part of the consent by these persons shall be deemed to have been committed by the consent holder.
- B. The Trader shall not stand or use any stall, barrow or basket or other receptacle or any mobile stall or vehicle in any street except such as are specified in the consent. Such stall, barrow etc. shall be removed from the specified site at the end of each trading day for storage at a location that is not on the public highway.
- C. The Trader shall not sell, expose or offer for sale any articles on days or at times other than those specified in the consent.
- D. The Trader shall not place, store or sell, expose or offer for sale any article outside the trading area marked out at the specified site (with the exception of Upper Gardner Street).
- E. The Trader shall at all times whilst trading provide a suitable receptacle for rubbish and litter and remove the rubbish and litter from the site at the end of each days trading. Such rubbish and litter is not to be placed in municipal litter bins. In Upper Gardner Street in lieu of this condition being complied with the Council will offer a refuse collection service upon payment of an appropriate fee.
- F. The Trader shall operate in a manner which causes no nuisance to the Council or to the general public.
- G. The Trader shall at all times whilst trading wear in a prominent position an identity badge provided by the Council. In addition, for town centre street trading consents, the consent, or copy thereof, shall be displayed on the stall/mobile vehicle.
- H. The Trader shall be insured against any claim in respect of third party liability whilst trading under a consent. No consent will be issued until a current policy has been produced to the Director of Environmental Services and the Trader shall produce evidence of such insurance to an authorised officer of the Council within seven days of the officer's request.
- I. Where there is a potential ignition source present including cooking facilities, a 2kg dry powder extinguisher which complies with the standards set out in BS 5423: 1987 must be provided.

- J. Where hot fat cooking facilities are provided a fire blanket should be provided and so positioned as to allow the blanket to be withdrawn easily and quickly.

APPENDIX 3

Clarification

Times of trading:

Upper Gardner Street	7am – 5pm
City Centre	8 am – 6pm
Zone B	No times set

- A waiting list will be administered where sites or types of street trading are oversubscribed.
- There will be no transfer of consents, no joint consents, preference will be given to local residents and consents will be issued not exceeding 12 months.
- Consent holders shall be fit and proper, the activity will cause no danger, obstruction, nuisance or annoyance to people in the vicinity and will leave 2m unobstructed footway.
- Preference will be given to existing traders at existing sites at renewal.
- Traders will ensure suitable refuse storage and remove refuse at the end of trading (with the exception of Upper Gardner Street).
- Traders will wear identity badges issued by the Council.
- Traders will take reasonable fire safety measures.
- Consent will only be issued following receipt of appropriate fee. Fees shall be payable quarterly.
- If the site is temporarily unavailable, it will be relocated to a nearby site or suspended and a proportion of the fee remitted.

APPENDIX 4

Reg Hook

33 Overhill Drive - Patcham,
Brighton BN1 8WF
01273 553745: Fax. 01273 883840
Mob: 07950 925758 Email: reghook@ntlworld.com

Ref: RH

25 March 2009

Mr. T. Nichols
Head of Environmental Health and Licensing
Brighton and Hove City Council
Bartholomew House
Bartholomew Square
Brighton
BN1 1JP

Dear Mr. Nichols

Re: Street Trader Licensing Policy Review

I write on behalf of the Governing Body and Head Teacher of Dorothy Stringer High School to contribute to the policy review of street trading licence conditions.

Our concern in this area stems from the fact that a street trader selling food such as burgers and chips from a van regularly targets our school. His name is Mr Coomber and he trades from a van labelled "Soft Ice Cream" registration number F409 DKL.

This trader used to sell food just inside the entrance to the school in Loder Road. When asked to leave school premises he simply re-located, and now parks at morning break, lunchtime and after school in Stringer Way at the rear of the school. This is a road owned by the Council separating the Stringer and Varndean campuses. It leads to various buildings including a nursery school and swimming pool and is constantly used by vehicles and pedestrians.

The **nuisance** caused to our school by this street trader is considerable:

1. Road safety

Naturally the safety of all the children at our school is our absolute priority. The van is parked on the road and restricts visibility. There is

no pavement. There is therefore an obvious and unacceptable risk of injury if a child going to buy food or drink from the van were to be hit by a car.

2. Unhealthy food

We are very proud of the fact that our school has Gold Status as a Healthy School. We have worked hard to improve the range and quality of healthy food in the canteen. Unfortunately, youngsters continue to be attracted by unhealthy food such as burgers and chips sold by this trader, who is plainly targeting a captive market. It would be far preferable for this type of food not to be available to children near school.

3. Litter

Inevitably this food is sold in wrappers which are unfortunately discarded causing a litter problem. Whilst the school tries to address this through educating children not to drop litter, the problem would not arise if the cause were removed.

4. Staffing implications

Because of the risk to children's safety, senior staff have no alternative but to supervise Stringer Way when the van is there. This is outside school premises and does not form part of their normal responsibilities. The governing body regards it as unreasonable for staff time and resources, already stretched to the maximum, to have to be deployed in this way.

Zones under Local Government (Miscellaneous Provisions) Act 1982: Street Trading

5. The information given on the Council website states that there are 2 zones in relation to street trading. Zone A excludes the city centre and Zone B defines other excluded areas in the rest of the city. We note that although "parks, gardens, recreation grounds, pleasure grounds and open spaces under the management and control of the Council" are excluded, there is no mention of schools or the areas around schools. Also the designated excluded streets are main thoroughfares with no mention of streets around schools (apart from some by coincidence, such as Elm Grove).
6. We understand from the Environment Department that it is not possible to attach individual terms and conditions to street trader licences, so that if a license is granted, the trader can effectively operate anywhere in Zone B apart from the designated excluded areas and roads.
7. We would therefore submit that as part of its policy review, the Council should extend the excluded Areas in Zone B specifically to exclude named streets around our school, and indeed, the other secondary

schools in the city, for the health, safety and protection of the children in our care.

8. In the case of Dorothy Stringer, we would wish to avoid the problem simply being displaced from Stringer Way to a nearby street (such as Draxmont Way). This would only increase the danger to our children and potentially cause a nuisance to our residential neighbours. Therefore, any extended exclusion zone would have to be meaningful in size. We would suggest an area of at least $\frac{1}{2}$ to 1 mile radius around our school.
9. Finally we wish to make clear that we do not object to Mr. Coomber or any street trader earning a living in this way, but we do object to the children in our school being targeted as his prime market, for all the reasons set out above. We do not argue for an unreasonable restriction in trade, but consider our submissions to be reasonable and proportionate.

Yours sincerely

Reg Hook
Chair of Governors
Dorothy Stringer School

c.c. Sarah Ranger

