

Licensing Panel (Licensing Act 2003 Functions)

Agenda Item
Brighton & Hove City Council

Subject:	Review of a Premises Licence under the Licensing Act 2003		
Premises:	B&W Stores, 29 York Place, Brighton, BN1 4GU		
Licence Holder:	Wahid K Ibrahim		
Date of Meeting:	20 August 2013		
Report of:	Head of Planning and Public Protection		
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Wards Affected:	St. Peter's & North Laine		

FOR GENERAL RELEASE

1. Purpose of the report

- 1.1 To review a Premises Licence for B&W Stores under the Licensing Act 2003

2. Summary of review process

- 2.1 Existing licence attached at Appendix A

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

- 2.3 An application was received by the Licensing Authority from the London Road Area Local Action Team, to review the licence granted to the premises known as B&W Stores, 29 York Place, Brighton, BN1 4GU. A copy of the application form is attached in Appendix B.

- 2.4 The grounds for the review relates to the following Licensing objectives:

- Prevention of Public Nuisance
- Crime of Disorder
- Public Safety

- 2.5 At this hearing the licensing authority must:

- Consider the application made in accordance with Section 51
- Consider any relevant representations
- Take such steps (if any) as are considered necessary for the promotion of the Licensing objectives. These steps are
 - to modify the conditions of the licence

- to exclude a licensable activity
- to remove the designated premises supervisor from the licence
- to suspend the licence for a period not exceeding 3 months, or
- to revoke the licence.

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

3 Representations received

3.1 Details of the representations made are notified to applicants on receipt by the Licensing Authority using a pro-forma. A summary appears below:

3.2 24 representations have been received from local residents, local businesses, the Licensing Authority, a local Councillor, a local MP, Sussex Police and Trading Standards on the grounds of The Prevention of Crime & Disorder, The Prevention of Public Nuisance, Public Safety and The Protection of Children from Harm supporting the application submitted by the London Road Local Action Team seeking the revocation of the licence.

3.3.1 Full details of the representations are attached at Appendix C. A map detailing the location of the premises is attached at Appendix D.

4. Commentary on licensing policy

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

General

- 1.2 The licensing objectives are:-
- (a) Prevention of Crime and Disorder;
 - (b) Public Safety;
 - (c) Prevention of Public Nuisance;
 - (d) Protection of Children from Harm.

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

In respect of the Prevention of Crime and Disorder

- 2.1 The licensing authority acknowledges that training and good management play a key part in preventing alcohol and drug related crime. The authority expects that all licensees of on-licensed premises attend training programmes which will raise their awareness of the issues relating to drugs and violence in licensed premises, and that suitable training be extended to all bar staff and door supervisors so that drug dealers and users will be deterred from using licensed premises for illegal purposes and that incidents of violence in licensed premises will be reduced. Licensees are also encouraged to attend training programmes to help identify children at risk and issues of basic child protection. It is the duty of the designated premises supervisor (DPS) to train staff on induction concerning conditions on their premises licence.
- 2.2 It is expected that the designated premises supervisor (DPS) will spend a significant amount of time on the premises. When not on the premises it will be essential that the DPS is contactable, particularly should problems arise with the premises and that staff are authorised by the DPS.
- 2.4 The location of violent attacks, anti-social behaviour and hate crime or related incidents may be used to justify closing times.
- 2.7.1 Diversity of premises: ensures that there is a mix of the different types of licensed premises and attracts a more diverse range of customers from different age groups, different communities and with different attitudes to alcohol consumption. It gives potential for positively changing the ambience of the city or an area of it. This will have a positive effect in reducing people's fear of crime and in increasing the number of evening visitors to the city centre. The Community Safety Strategy recognises that too many single uses in a confined area and patrons turning out onto the streets at the same time may create opportunities for violent crime and public disorder and therefore

supports: mixed use venues encouraging a wider age balance. A “matrix” approach to licensing decisions has been adopted and is set out below.

Matrix approach for licensing decisions in a Statement of Licensing Policy

	Cumulative Impact Area	Special Stress Area and London Road	Mixed Commercial and Residential Areas (streets containing shopping parades)	Residential Area (mainly residences in street)	Marina
Restaurant	Yes (midnight)	Yes (2am)	Yes	Yes (11.30pm)	Yes
Late Night Takeaways	No	Yes (midnight)	Yes (midnight)	Yes (midnight)	Yes
Night Club	No	No	Yes (3am)	No	Yes
Pub	Yes (11pm)	Yes (11pm)	Yes (3am)	Yes (11pm, midnight Friday and Saturday)	Yes
HVVD (Super pub)	No	No	No	No	Yes
Non-alcohol lead (e.g. Theatre)	Yes (favourable)	Yes (favourable)	Yes (favourable)	Yes	Yes
Off-licence	No	No	No	Yes (8pm)	Local shops only
Members Club	Yes (<100)	Yes (<100)	Yes	Yes (11pm and midnight Friday and Saturday)	Yes

Notes on matrix

Subject to the following, the policy, as represented in the matrix, would be strictly adhered to

- 1) Each application would be considered on individual merit
- 2) Departure from policy is expected only in exceptional circumstances
- 3) Exceptional circumstances will not include quality of management or size of venue except where explicitly stated in policy matrix
- 4) Exceptional circumstances may include: close consultation with Sussex Police and the Licensing Authority, meeting requirements of

responsible authorities, an appropriate corporate social responsibility policy, community contribution to off set impact (such as financial contribution to infrastructure), community support, alcohol sale ancillary business activity (demonstrable to responsible authorities and licensing authority, for instance by licence condition allowing authorised officers access to sales accounts), BCRP membership

5) The following licensing activities are encouraged and valued by the licensing authority: outdoor regulated entertainment, community based street parties, members clubs, traditional pubs outside the city centre and non-alcohol led licensable activities, particularly within city centre

6) Shatterproof drinking receptacles will normally be required by licence condition in alcohol led establishments in the city centre

7) Outdoor events will be supported where arranged through the council's event planning process

8) Favourable consideration will be given to residential need

9) Favourable consideration will be given to local businesses properly engaged with the local licensing authority and responsible authorities

2.7.6 Care, control and supervision of premises:

The Licensing authority supports the Business Crime Reduction Partnership and other approved schemes. Where appropriate, premises licence holders should be members of the BCRP for the deterrence to violent crime that such membership provides. The BCRP NightSafe radio scheme is normally expected as an operational requirement for city centre bars, clubs and pubs and is an example of good practice in achieving the aim of reducing crime and disorder and improving public safety. Well managed pub-watch schemes provide information exchange between the premises licence holders and responsible authorities that reduce and deter violent crime and disorder. The council will support a responsible licensing scheme.

2.7.7 The effective management and supervision of a venue is a key factor in reducing crime and disorder, both within it and outside. The police will consider the applicants, objecting to the application where appropriate. The police may suggest crime prevention measures in relation to, for example, the internal layout of the premises, closed-circuit television, help points, lighting and security staff. The police may ask for conditions which support such measures to be imposed when licensing applications are granted, e.g. type of licence, capacity, operating hours restrictions.

2.7.8 Following the grant of a licence, the management and supervision of the premises, in so far as it might impact on crime and disorder, will continue to be monitored. Particular attention will be paid to any licensed premises where there is evidence of criminal activity or any association with racist or homophobic crime. The licensing authority will keep itself well briefed on the nature, location and type of premises where alcohol related violence and disorder are occurring so it can take full account of the facts and avoid exacerbating problems as required by the Community Safety Strategy. Where licensed premises are found to cause nuisance or be associated with disorder or

unreasonable disturbance, powers of revocation or the imposition of conditions may be considered. Conditions may include use of closed-circuit television, licensed door supervisors and earlier closing times. Such action to restrict the operation may be taken for trial periods to allow businesses an opportunity to remedy existing disorder, nuisance or disturbance.

2.9 **Street Drinking**

The area around The Level is considered high risk for street drinkers and the Licensing Authority will have regard to The Prevention of Crime & Disorder by virtue of street drinking and antisocial behaviour when considering applications in this area.

3 **Public Safety**

The following details and measures are intended to address the need for the protection of public safety which may be associated with licensed premises and certificated club premises.

- 3.5 Policy recognises that the numbers of late night revellers can lead to service delivery pinch-points, for example at city centre taxi ranks. Frustration and restlessness in queues can lead to anti-social behaviour and public disorder which can be controlled by, for example, taxi marshalling systems. Operators whose customers contribute to the night-time demand for taxis may wish to consider assisting in the provision of resources for such systems or similar schemes.

4. **Prevention of Public Nuisance**

4.12 Health Impact Assessment

The licensing authority's response to this public consultation exercise is as follows:

- There is no presumption in favour of later terminal hours generally
- Minor variations to licences will be processed expeditiously
- The Cumulative Impact Area (CIA) and Special Stress Areas (SSAs) will include all locations where there are residents in the vicinity of licensed premises when there is an evidential basis to justify
- Low-level impacts and noise levels as a result of alcohol consumption are legitimate considerations for licensing reviews
- Information about the licensing process using leaflets and the Council's website will be available for residents
- The Council will publicise its statement of licensing policy, enforcement policy and information to assist applying for licence reviews and making representations for licence applications
- The local character provided by small local public houses is recognised. Policy supports the need to support small local businesses, providing information and business support to assist successful businesses
- Policy recognises the need to mediate between residents and licensed premises where noise and other nuisance/disturbance

occurs late into the night/early morning where appropriate. Enforcement action will have regard to the Council's enforcement policies

- Normally the terminal hour in residential areas will not exceed 2330 hours
- Normally the terminal hour in mixed areas will not exceed 0200 hours
- Normally in city centre leisure areas favourable consideration will be given to later terminal hours.

In respect of the Protection of Children from Harm

- 5.1 Licensees should note the concern of the authority that drink related disorder frequently involves under 18's. To prevent illegal purchases of alcohol by such persons, the committee recommend that all licensees should work with a suitable 'proof of age' scheme and ensure that appropriate identification is requested prior to entry and when requesting alcohol, where appropriate. Appropriate forms of identification are currently considered to be those recommended by police, trading standards officers and their partners in the licensing strategy group (eg passport, photo driving licence or pass card).
- 5.2 It is the licensing authority's expectation that all staff responsible for the sale of intoxicating liquor receive information and advice on the licensing laws relating to children and young persons in licensed premises. Licensed premises staff are required to take reasonable steps to prevent under age sales. The licensing authority will not seek to limit the access of children to any premises unless it is necessary for the prevention of physical, moral or psychological harm to them.
- 5.3 To reduce alcohol-induced problematic behaviour by under 18 year olds, to enforce underage purchase and drinking laws and to assist in the protection of children from harm, the licensing authority supports the following measures:-
- (a) Police should exercise powers (Confiscation of Alcohol (Young Persons) Act 1997) to remove alcohol from young people on the street
 - (b) Police and trading standards should implement test purchasing to reduce sales to under 18s in on and off sales licensed premises
 - (c) Further take-up of proof of age schemes will be promoted
 - (d) In-house, mystery shopper type schemes operated by local businesses will be supported
 - (e) Providers of events specifically catering for unaccompanied children should consider whether all staff at such events need to be CRB checked.
- 5.4 The licensing authority will not seek to require that access to any premises is given to children at all times – under normal circumstances this will be left to the discretion of the licensee. The following areas give

rise to concern in respect of children, who will normally be excluded from premises:-

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

Options may include:-

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

5.7 Children and Young Persons Overview and Scrutiny Council reported on Reducing Alcohol Related Harm to Children and Young People to Licensing Committee who agreed:

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

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

5.7.3 In determining applications and reviews, applications can only be dealt with on their individual merit. Use of schemes like Think 21 and Challenge 25 are appropriate on a case by case basis. Normally a Challenge 25 condition will be appropriate.

5.7.4 A clear causal link between price discounting and disorder will normally lead to the imposition of conditions prohibiting irresponsible promotions. This is now reflected in the new mandatory conditions which can be found on the licensing pages of the council's website.

5.8 Best Practice to protect children from harm

The Council passed a Notice of Motion that licensing committee recommend best practice for both on and off premises to take on board on a voluntary basis, in order to promote responsible licensing.

- Staff must be aware of the risk of the problem of proxy sales and offer assistance to responsible authorities to deter offences
- Signage on premises should set out legal duties
- Voluntary restriction of high strength alcohol – operating schedules may be used to limit high ABV beers and ciders
- Staff training – in addition to personal licence holders training, staff must be adequately trained for duties
- Challenge 25 would be the norm, particularly in the off licence trade
- Signage – proxy sale – deterrence

The council will support accreditation schemes, such as Best Bar None and Purple Flag, where appropriate and subject to resources.

5.9 Health Impact Assessment

The licensing authority's response to this public consultation process is as follows:

- Enforcement decisions of under-age sales from licensed premises will be taken with regard to enforcement policy appended
- Safe Space and refuges for potentially vulnerable people is supported
- The council will make a telephone number available for reporting licensing offences and concerns.

Integration of Strategies

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

6.8 This policy avoids duplication with other regulatory regimes wherever possible.

6.9 Enforcement – the enforcement of licensing law and inspection of licensed premises is detailed in the Protocol between Sussex Police, the East Sussex Fire & Rescue Service and Brighton & Hove City Council. This protocol reflects the need for more efficient deployment of Police and Local Authority staff commonly engaged in licensing enforcement and can be found at appendix H of Brighton and Hove City Council's Statement of Licensing Policy. In addition the Licensing Authority will have regard to its publishing Licensing Enforcement Policy in making enforcement decisions (Appendix E) of Brighton and Hove City Council's Statement of Licensing Policy.

In order to better target enforcement resources, inspections will be undertaken outside of normal office hours and the sharing of information between all enforcement agencies will be encouraged through joint meetings or similar arrangements. Joint Intelligence Meetings are organised and include officers from responsible authorities.

The Council's Licensing Enforcement Policy has adopted the approach set out by the Home Office and DCMS document entitled "Problem Premises on Probation - Red and Yellow Cards; How it would work". This is highlighted in the Annexes A & B of Appendix E - The document sets out to encourage partnership working in identifying problem premises and lists steps to be taken in first and second intervention measures together with a list of possible tough conditions. First intervention may be suspension of licence with conditions (yellow card) and second intervention would look to revoke a licence (red card). The Guidance makes it clear that proposed interventions would not prevent the giving of an instant red card in an appropriately serious case. In these circumstances it would be a straight red leading to a withdrawal of the licence.

8 Reviews

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

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

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 new regime

Finance Officer Consulted: Jeff Coates

Date: 29.07.13

5.2 Legal Implications:

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

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

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

5.3 Equalities Implications:

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

5.4 Sustainability Implications:

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

5.5 Crime & Disorder Implications:

Licensing policy aims to prevent crime and disorder and protect public safety.

5.6 Risk and Opportunity Management Implications:

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

5.7 Corporate / Citywide Implications:

The success of the city's tourism strategy requires a safe, attractive city centre to improve competitiveness. The Act may significantly change night time economy

SUPPORTING DOCUMENTATION

Appendices:

1. Appendix A – Part A of Premises Licence
2. Appendix B – Review Application
3. Appendix C – Representation
4. Appendix D – Map of area
5. Appendix E – Annex A & B 'Enforcement Approaches'

Documents in Members' Rooms

1. Brighton & Hove City Council, Licensing Act 2003: Statement of Licensing Policy 2011, as amended 20 December 2011.

Background Documents

1. Brighton & Hove City Council, Licensing Act 2003: Statement of Licensing Policy 2011, as amended 20 December 2011.

