



Report of the Live Music Venues Policy Panel

November 2016

Panel Members

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1. Chair's Foreword

I was delighted to chair this panel looking into smaller, grassroots live music venues in the city, because they are a vital part of what makes Brighton & Hove a great place to live in or visit. It is estimated that the music scene in Brighton & Hove generates a minimum of £45m per year from visitors alone¹, which accounts for roughly 40% of the total spend on live music in the city. This means that the city's live music is worth around £112m each year.

The panel was concerned to hear how many challenges faced those working in small live music venues in the city, such as the:

- Increased profitability of residential accommodation, meaning that venues and residents are living closer to each other
- Impact of changing and contradictory licensing and planning regulations, as well as increasing deregulation
- Worry that enforcement action could result in businesses closing
- Unprofitability and unpredictability of the sector.

Given the importance of this sector to the city, the panel looked at how to find the best ways to support the industry while ensuring this is balanced with the needs and rights of residents and visitors to the city. This valuable policy panel proposes the creation of a new city-wide Night Time Economy Partnership that will bring together stakeholders from across the city who have both an interest in live music and providing the best night time economy for Brighton & Hove. If agreed, this partnership will be tasked with exploring:

- The key local and national issues relating to the live music sector
- Funding opportunities for live music in the city.

The partnership will also work with the council to look at:

- How City Plan 2 could encourage mid-sized music venues in Brighton & Hove
- How to improve access to live music for younger people and disabled people.

The panel has also recommended two 'quick wins' to assist the sector, for the council to:

- Explore with the partnership, the development of a cross-service web resource to provide a one-stop source of information about live music venues e.g. licensing conditions
- In consultation with the partnership, to identify if parking dispensations could be used for unloading of musical equipment into music venues.

¹ (UK Music, *Wish you were here*, 2016)

The panel hopes that this partnership will result in good communication between the creative industries, the regulatory authorities, our local business leaders and of course our residents. This proposed forum will be able to help provide a space to work out how to promote and enhance the live music scene so it continues to make a vibrant and positive input into our city. I would like to thank all those who came in person to give us such useful evidence and those who wrote in, as well as the officers who supported the panel during our investigations.

Councillor Joe Miller, Chair of the Live Music Policy Panel

2. Executive Summary

The value of the night time economy

- 2.1 One in eight jobs in London now supports its night time economy (over 20% of them in arts, entertainment and recreation). It is expected that as the night time economy matures it will boost the economy by an extra £2bn a year by 2029.²

Brighton & Hove at night

- 2.2 The night time economy is a vital attraction for those who live, work or study in Brighton & Hove as well as its visitors. According to the Local Government Information Unit:

“Attracting restaurants, music venues, and other entertainment options to locate in your town centre will allow people to choose from an array of alternative activities to encourage a wider range of people into town in the evening and night time, and to reduce alcohol related crime and injury.”³

- 2.3 So Brighton & Hove stands to gain significantly from supporting and nurturing the growth of its night time economy. At the same time, recognising the need to balance this with the needs of local residents, so as to minimise undue noise and disturbance.

Why is the live music sector important in Brighton & Hove?

- 2.4 Live music is an important part of this night time offer. The city has a significant number of small, medium and large music venues including the Dome, the Brighton Centre, Concorde 2, Sticky Mike’s Frog Bar and the Green Door Store. In 2015 music tourism generated £45 million in Brighton & Hove and provided the equivalent of 481 jobs.

Why scrutinise?

- 2.5 This panel was set up in response to a petition about the closure of a venue in the city, following complaints about noise nuisance. The petition related to noise abatement notices closing premises.
- 2.6 The panel heard evidence that when a noise nuisance is established the council has no legal discretion to serve a noise abatement notice, and noise abatement notices cannot require a premise to close. Of the 11,058 noise complaints received by the council in the last four years only 25 noise abatement notices have been served on licensed premises, and this can be for people noise, and/or live and recorded music.

² <http://londonfirst.co.uk/wp-content/uploads/2016/08/Londons-24-hour-economy.pdf>

³ LGIU report: Building a Vibrant Night Time Economy (2016)

- 2.7 Hearing about the problems faced by the live music sector, the panel widened their terms of reference to look at how to offer support to this sector.

This is a national issue

- 2.8 Significant numbers of live music venues, particularly the smaller grassroots venues, have closed across the country, leading to a number of high profile reports being published last year looking at this issue. Between 2007 and 2015, London lost 35% of its grassroots music venues⁴. The Mayor of London's Music Venues Taskforce emphasised how important these venues are in feeding the music industry with a supply of acts. A similar situation to London is likely to develop in Brighton & Hove in the next decade and so the policy panel drew on these reports to develop their recommendations.

Growing the sector here

- 2.9 As the music industry is increasingly priced out of the capital, Brighton & Hove could seize the opportunity to offer a more affordable location and an encouraging base for the music sector to operate in. This could bring significant benefits to the city, but failure to do so could result in the sector looking to more affordable places such as Hastings and Worthing.

Why are smaller venues at risk?

- 2.10 Live music is an area of the music industry which is thriving, alongside merchandise and music tourism. However smaller venues do not seem to be part of this success. There appears to be a big gap between the small venues which operate on very tight margins with stagnating ticket prices and the increasingly expensive concerts in larger venues. The panel was set up to look at the city's smaller music venues because this sector appears to be also struggling in Brighton & Hove and some of the high profile closures are having a significant impact on the confidence of the sector. The cumulative impact of venue closures can put the whole music scene of a city at risk.
- 2.11 The witnesses working in the live music sector who spoke to the panel set out convincingly why they needed the support and encouragement of the council and other bodies to survive and grow, and how their growth will in turn benefit the city.

Why is the sector vulnerable in Brighton & Hove?

- 2.12 The panel heard that the grassroots music sector in the city was becoming increasingly vulnerable. The reasons include:

⁴ https://www.london.gov.uk/sites/default/files/londons_grassroots_music_venues_-_rescue_plan_-_october_2015.pdf

- The increasing profitability of developing residential accommodation in Brighton & Hove, which in turn is reducing the number of buildings in the city in which it is viable to host live music
- The financial vulnerability of the sector, because it is rarely profitable and operating on very tight margins, without being able to attract public funding
- It is a sector bound by a complicated and changing regime of regulation, as well as deregulation, which makes it a challenge for those working with live music.

Why should we support grassroots music venues?

2.13 The smaller venues are a crucial part of the success of the music industry, because they nurture talent and give people the opportunity to learn how to play live. The small margins mean that risks are taken and talent is developed.

The location of music venues

2.14 Many grassroots music venues have grown up in areas set away from residential accommodation. A good location is important, as bands can sometimes play at a loud volume. The Concorde 2, on the seafront, is an example of a venue that has found it easier to operate because of its distance from any homes.

How does a changing city affect live music?

2.15 The development of Brighton & Hove is increasingly having an impact on the live music sector, including:

- The closure of music venues, such as those in the backrooms of pubs, as these buildings are developed into residential accommodation
- The turning of other commercial premises (which when vacated at night made good neighbours for music venues) into residential accommodation.

2.16 These changes are both reducing the number of premises that can host live music in the city and resulting in more people living closer to live music venues, which increases the likelihood that these residents may object to noise levels from nearby venues. The Mayor of London's Music Venues Taskforce described these growing pressures in the capital:

*'An increasing population means that residential development is taking place cheek- by- jowl with night-time activity. This pressure, coupled with rising property prices and increasing costs for grassroots music venues is proving too much and venues are closing.'*⁵

⁵ https://www.london.gov.uk/sites/default/files/londons_grassroots_music_venues_-_rescue_plan_-_october_2015.pdf

2.17 The proximity of venues and homes has also been exacerbated by the smoking ban, resulting in more people standing outside these venues; as well as by deregulation which can allow venues to stay open later. While the panel did not receive significant evidence from the community about the effect of live music, they were concerned to make recommendations which struck a balance between the needs of residents and music venues.

How does the council both support and regulate live music

2.18 The council has a range of roles in relation to live music, primarily:

- Regulation
- Enforcement
- Economic development & culture.

2.19 The first two roles may sometimes make the council appear to be focused on constraining the live music sector, rather than enabling it to grow. The witnesses working in grassroots music sector told the panel how complex they found the rules and regulations in this sector, especially since the recent deregulation.

Planning

2.20 The panel heard that the key issue influencing the direction of planning decisions is deregulation. Deregulation also enables premises to change use without requiring planning permission, which means that they miss out on the benefits of planning conditions to help manage the impact of noise on residential and commercial premises.

2.21 This is an area which is likely to see continuing change, as case law develops in relation to planning and development issues. For example the Agent of Change Principle (which puts the responsibility for noise management issues on the agent of change, such as a resident moving into a flat near an existing music venue). The Mayor of London's Music Venues Taskforce emphasises the need for guidance on regulating and protecting music venues for those making planning decisions.

2.22 One of the key aims of the Night Time Economy Partnership, recommended by the panel, would be to provide a forum for those involved in live music to review existing policies and develop new policies as appropriate in this changing and complex area.

2.23 To make this information more accessible, the panel have recommended that a web resource is set up to provide a one-stop source of information about live music, such as licensing, noise management, and planning. This could in turn benefit the council and police, who may be called upon to intervene in a

growing number of complaints as the proximity of venues and residents increases.

- 2.24 This on-line resource could help at a time when there has been increasing pressure on resources in the sections of the council which are able to offer economic support to businesses in the city and promote the value of the cultural sector.

Licensing

- 2.25 Licensing is an area which has also experienced substantial deregulation, with those holding live music events with fewer than 500 people no longer needing a licence. This is alongside the planning deregulation which has enabled residential accommodation to be developed without planning permission in areas close to live music venues. The Licensing Act 2003 also enables premises to open later, when local residents want to sleep. In addition the introduction of the smoking ban has moved customers and audiences into the open air, sometimes close to residential accommodation.
- 2.26 The panel also heard how licensing conditions could be felt to be complex and onerous by those holding live music events as well as increasing their costs, which can be problematic when operating a business on very tight margins.

Is this closing music venues?

- 2.27 A recent Twitter poll by the Music Venue Trust asked “What is the number one root cause of venue closures in the UK?” The responses were as follows:
1. 39% said development/planning
 2. 18% licensing/noise
 3. 43% the cost of 1 & 2 above⁶
- 2.28 It was clear to the panel that the closure of music venues in Brighton & Hove, such as the Freebutt and the Blind Tiger, has had a significant impact on the sector. One of the roles of the proposed partnership could be to restore the confidence in the sector and to seek ways to prevent further closures where possible.

Changing our view of live music venues

- 2.29 Only a limited number of people complained to the panel about the impact of live music in their neighbourhood. This backed up the Music Venues Taskforce which wrote:

“The old-fashioned view that grassroots music venues cause noise and nuisance doesn’t reflect the modern reality of these responsible small

⁶ Music Venues Trust website <http://musicvenuetrust.com/>

businesses...They are specialists in cutting-edge music and their audiences are surprisingly sober.”⁷

- 2.30 This is reflected in the recommendations of the panel with their focus on support for mediation and partnership with grassroots music venues.

Balancing the needs of venues and residents

- 2.31 If a resident does experience difficulties with a nearby venue, the panel heard how important it is to have a transparent complaints process and clear information on the right person to complain to. Witnesses from the music sector talked of their desire to encourage residents to talk to them first about any problems they were experiencing. Often the first a music venue knows of any difficulties is when the council contacts them.

- 2.32 The new London Night Czar, Amy Lamé, spoke of the need to get the:

“...owner, the council, the licensing committee, the police, the residents and others together to discuss these things before it becomes a problem.”⁸

Encouraging new audiences

- 2.33 The panel heard that another way to ensure the future of live music, alongside preserving grassroots venues, was to make live music more accessible to new audiences. It was seen as vital to attract younger audiences to see bands, by finding a workable solution to the licensing restrictions around alcohol and people under 18. These restrictions can deter venues from holding concerts which are accessible to young people. The panel were also keen to see what could be done to make live music more accessible to disabled people, particularly as so many smaller venues are based in inaccessible buildings and have limited resources to improve access.

What kind of support would the live music sector welcome?

- 2.34 People working in the live music sector (see statements in Appendix 1) spoke of their desire to develop a more positive relationship with the council and a better understanding of the regulatory framework. As the city continues to change, it becomes ever more important for the council to foster better relations with those working in the live music sector and the night time economy as a whole. The panel hopes that council support to establish a Night Time Economy Partnership will demonstrate its commitment to this sector.

⁷ https://www.london.gov.uk/sites/default/files/londons_grassroots_music_venues_-_rescue_plan_-_october_2015.pdf

⁸ <http://www.musicweek.com/live/read/london-night-czar-lam-to-make-halting-venue-closures-her-total-priority/066448>

Conclusion

- 2.35 This panel was set up to take a focused look at noise abatement in relation to smaller music venues in Brighton & Hove. The evidence heard by the panel led them to take a wider look at the live music sector when it realised the breadth of national and local challenges they face, including regulation, deregulation and financial vulnerability.
- 2.36 The panel recognises the council cannot commit significant resources to assist the sector. However the live music sector is a really important part of the city's night time economy. In recognition of this the panel think it will be hugely beneficial for the council to kick-start the establishment of a Night Time Economy Partnership.

3. Glossary

Agent of Change principle: The Music Venue Trust explained this principle as follows:

“...the person or business responsible for the change is responsible for managing the impact of the change. This means that an apartment block to be built near an established live music venue would have to pay for soundproofing, while a live music venue opening in a residential area would be responsible for the costs.”⁹

This principle is enacted in music zones and a condition of being a resident there would be to acknowledge the Deed of Easement. This would be included in the guide for a new owner/lessee. This does not stop a resident or business from finding noise levels too loud.

Article 4 Direction: An Article 4 Direction removes permitted development rights for development or change of use. As a consequence planning permission would be required (though no fee is charged). Evidence is required to justify putting an Article 4 Direction in place.

Asset of Community Value: In England, an asset of community value (ACV) is land or property of importance to a local community which is subject to additional protection from development¹⁰ under the Localism Act 2011.¹¹ Voluntary and community organisations can nominate an asset to be included on their local authority's register of asset of community value.¹²

Deed of Easement: This is an agreement that when people move into a designated music zone they will not complain about the noise. This is in the 2018 adoption of the London Plan.

Grassroots music venues: These are small spaces which play host to live music e.g. the upstairs, or back rooms of pubs. The main motive of this is being creative, rather than making a profit. The survey by the Music Venue Trust used this term to describe venues with a capacity of between 100 to 500 people (the majority of them 100-300).¹³

Night Mayor: A Night Mayor is a champion for the night time economy who will bring together night time businesses, local authorities and emergency services to ensure night time activity can survive. They would also mediate the friction that occurs between daytime civilians and nightlife denizens. A Night Mayor has been used successfully in Amsterdam and Melbourne and a Night Czar has just been appointed in London.

⁹ <http://musicvenue Trust.com/2014/09/what-is-agent-of-change-and-why-is-it-important/>

¹⁰ https://en.wikipedia.org/wiki/Real_estate_development

¹¹ https://en.wikipedia.org/wiki/Localism_Act_2011

¹² https://en.wikipedia.org/wiki/Asset_of_community_value

¹³ <http://musicvenue Trust>

4. Recommendations

The panel has developed the following seven recommendations to provide short term and long term solutions to address the issues raised in the evidence they gathered.

Night Time Economy Partnership

Recommendation 1: To establish a Night Time Economy Partnership.

Brighton & Hove City Council recommends that Brighton & Hove Connected brings together a range of partners to establish this partnership. Its membership will be drawn from:

BHCC, Sussex Police, the licensing trade, venues, NHS, local business leaders, transport providers, the creative industries - including the music sector, community groups and other relevant stakeholders such as universities, colleges and schools such as BIMM (British & Irish Modern Music Institute) Brighton).

The partnership will provide a structure in which members will be able to:

- Review the effectiveness of existing policies and develop new policies as appropriate
- Provide oversight of the live music industry and its place within the overall night time economy
- Ensure effective communication between stakeholders and encourage positive resolution of any differences or disputes that may occur
- Ensure that the role of support services is considered in the development of new initiatives that could result in extra demand on those services
- Communicate to the city stakeholders as a whole the positive impact of the night time economy and the music scene in particular
- Act as an umbrella group to pursue joint funding and other opportunities as they become available
- Provide links to other partnerships as appropriate and also ensure that key BHCC committees are kept up to date with any developments with this work
- Introduce cross-service information, good practice, advice and links for the sector on the Brighton & Hove City Council website.

Recommendation 2: Addressing the key national and local issues relating to live music

Evidence to the panel about the live music sector in Brighton & Hove raised very similar issues to those highlighted in recent national reports on live music, including those by the Music Venue Trust and the Music Venues Taskforce (set up by the Mayor of London).

The panel recommend that an initial remit of this partnership will be to explore the feasibility of the recommendations made by the Music Venues Taskforce, which relate to:

1. **Planning policies** – including the Agent of Change principle in planning policies, whether local authorities should consider the use of an Article 4 Direction to protect music venues, and making use of the Asset of Community Value process to protect music venues
2. **Developers** – including the potential for the Deed of Easement of Noise when creating housing near existing music venues. The potential for developers to work with planning authorities to create high quality new grassroots venues, and set up Music Zones for grassroots music activity
3. **Business rates** – including the possibility of providing relief for grassroots music venues
4. **Licensing, Environmental Health and Police Policy** – to look at licensing requirements in relation to grass roots music venues
5. **Supporting music** – consider the creation of a Music Development Board, and a Night Mayor
6. **Championing music in the city** – a campaign to promote grassroots venues and their heritage.

The panel recommend that the partnership is tasked with reporting back on its progress in exploring the issues detailed in all the recommendations to the Environment, Transport & Sustainability Committee. This shall be within 18 months of this report being accepted.

Recommendation 3: Resources

The panel recommend that the partnership explore funding opportunities to assist grassroots music events and promote their value to the city.

Growing the sector

Recommendation 4: Mid-size music venues for Brighton & Hove

The panel recommend that the partnership explore with the council how City Plan 2 could be used to develop mid-size music venues in the city.¹⁴

Brighton & Hove City Council supporting live music

Recommendation 5: An on-line resource

The panel recommend that the partnership explore with the council how to develop a cross-service web resource to provide a one-stop source of information about live music venues e.g. licensing conditions.

¹⁴ This refers to venues which have a capacity of more than 500 people. This is not an exact definition as in Brighton & Hove, the Concorde 2 (which is seen as a grassroots venue) has a capacity of 600. An example of a medium venue in the city is the Dome which has a capacity of 1,700. Then there are the large or arena venues, for example the Brighton Centre which has a capacity of 4,500.

Recommendation 6: Parking

For the council, in consultation with the partnership, to identify if parking dispensations could be used for unloading of musical equipment to mirror similar dispensations issued by the City Council's Parking Services. A report on this issue should be brought to Environment, Transport and Sustainability Committee within 6 months of the panel report being accepted.

Access to live music

Recommendation 7: The panel recommend that the partnership work with the council to identify how to enable younger people and disabled people to participate more fully in live music events, both in terms of licensing arrangements and the accessibility of venues.

If following consultation, the proposal to create a partnership is not considered the most effective approach then the matter shall go back to Committee to identify an alternative means of addressing the recommendations of the panel.

5. The report of the Live Music Venues Policy Panel

What is a policy panel?

- 5.1 Members of any of the council's policy committees can choose to look at an issue of importance to the city via a policy panel: a task & finish group of members. This policy panel was made up of a cross-party group of councillors which heard evidence on the issue of live music venues to make a set of recommendations to the Environment, Transport and Sustainability Committee for approval. Where a panel recommendation is approved, the committee will instruct officers to implement the recommendation or, if the matter is outside the committee's remit, then it can refer it to another committee.

Why was this panel set up?

- 5.2 At Full Council on 26 March 2015 a petition was presented which called on the council to review its procedures and protocols in respect of noise abatement notices served on live music venues across the city. It had been signed by 4,698 people. It was resolved that the petition be noted and referred to the Environment, Transport & Sustainability Committee for consideration along with the establishment of a policy panel to review the issues raised in the petition. At Committee on the 7th July 2015 the petition was noted and it was agreed that this policy panel be established.
- 5.3 The panel members were Councillors Joe Miller (Chair), Peter Atkinson and Lizzie Deane. At the panel's first meeting on 1st October 2015 the members decided not to just review procedures and protocols relating to the statutory provisions of service of noise abatement notices. The panel also wanted to understand the challenges faced by the live music sector sector, in particular by smaller music venues, and to find ways to support them while still protecting the needs of residents in the city.

Terms of reference

- 5.4 The panel agreed the following terms of reference, to:
- Understand the current situation of live music venues in Brighton & Hove and their position in the community
 - Provide an independent cross-party review of the issues which relate to live music venues in Brighton & Hove, including noise abatement
 - Review national and local legislation, and policies, procedures and protocols that relate to music venues and noise
 - Look at good practice in other areas of the country which relates to this issue
 - To be informed by evidence provided by a balanced representative cohort of interested parties. This will include council officers, other local authorities, council members, members of parliament, community representatives, industry representatives such as band promoters and music venues, and Mark Stack the originator of the petition

- Report its findings in a written report that is submitted to the Environment Transport and Sustainability Committee.

5.5 It was recognised that issues raised in this panel may also apply to venues which play recorded music or host a mixture of live and recorded music.

Case study: The Blind Tiger

The petition which triggered the setting up of this panel, followed significant media interest in relation to a noise complaint made about the Blind Tiger (a Brighton music venue used for live music and DJ nights). The complainant was a tenant living in the flat directly above the venue, and the flats and the Blind Tiger were owned by the same person. The Blind Tiger was leased to an independent company. Following an investigation by the council's Environmental Protection and Licensing Teams, a statutory noise nuisance was identified. This progress of the investigation was communicated to all parties. Under the provisions of the Environmental Protection Act 1990 a local authority has a duty to investigate noise complaints and where a statutory nuisance is identified, the local authority has a duty to serve a noise abatement notice. The council fulfilled its statutory duty and served a noise abatement notice on the operators of the Blind Tiger. The notice did not require the premises to close, and it did not impose a ban on live or amplified music. The notice provided 2 months for the venue to abate the noise nuisance. Officers from the council continued to work with them to try and achieve compliance. In June 2014 the operator of the Blind Tiger chose to close the premises.

5.6 Evidence to the panel revealed that in the last four years 11,058 noise complaints have been received and only 25 licensed premises have been served with noise abatement notices. None of these notices have required the premises to close down. A noise abatement notice can only require abatement of the noise nuisance.

The council's roles and responsibilities in relation to the live music sector

5.7 The council is the Local Planning Authority and so is responsible for making decisions in relation to new planning applications for any new premises, change of use, or structural changes to existing premises. These planning decisions include the impact that a new live music venue will have when it is built, but also the impact of new residential premises being built near existing long-established live music venues.

5.8 The council's planning service also has an enforcement role, for example where a live music business is established in a building which has no planning permission for operating as a live music venue. This could be a former warehouse, or even a church. Planning decisions in relation to new planning

applications, as well as changes of use, are not made in isolation. So the legal process includes a broad range of services, and organisations that need to be consulted to ensure that all impacts have been assessed. Examples include noise impact and associated sound insulation or light impact from external advertising and outdoor areas.

- 5.9 The council is also the Licensing Authority and issues licences where there is the sale of alcohol and regulated entertainment. In this role the council works closely with partners who also have an enforcement role around licensing. This includes: the Police (in relation to the licensing objective of prevention of crime and disorder), Trading Standards, Children's Services (in relation to the licensing objective of protecting children from harm), and Environmental Protection and Health & Safety services (in relation to the licensing objectives preventing public nuisance and public safety).
- 5.10 The council is also the Enforcing Authority in relation to noise nuisance and service of abatement notices.

The live music sector

In brief:

A number of recent national reports about live music have been prompted by concern about the number of smaller music venues which have shut down in the UK. These venues provide a vital place for bands to develop, some of whom will go on to make a considerable contribution to the music industry. The cultural offer of Brighton & Hove is an important part of the city's success, but the panel heard that music venues in the city are facing a range of problems, including:

- *Financial vulnerability – with many promoters and bands barely breaking even and venues which could make more money if they did not host live music*
- *The loss of suitable venues – as it becomes more attractive to develop residential accommodation*
- *A complex regime of regulation, and deregulation, of planning and licensing that is having a significant impact on these smaller music venues.*

Live music in the United Kingdom

5.11 The panel's understanding of the national picture, as well as the situation in London, has been developed by four key reports on live music which are described below. These reports have also informed the panel's recommendations. The reports demonstrate that the issue of finding ways to protect grassroots music venues is becoming an increasing national and international priority.

5.12 Firstly, the Music Venue Trust (founded in 2014) published its report '*Understanding Small Music Venues*' (March 2015).¹⁵

5.13 Secondly, in October 2015, the Mayor of London's Music Venues Taskforce published its report '*London's Grassroots Music Venues Rescue Plan : A report for the Mayor, Music Industry, Local Authorities, Government, Planners, Developers, Licensers, Police, Economists, Tourism, Agencies, Musicians, Culture Funders*'.¹⁶ The Taskforce showed that 35% of London's grassroots music venues have been lost since 2007. Since publication of this report, the London Music Board and the Night Time Commission have been created to implement the Rescue Plan and be key drivers of cultural and economic regeneration.

¹⁵ (https://www.musicvenue trust.com/wp-content/uploads/2015/03/music_venue_trust_Report_V5-1.pdf)

¹⁶ (https://www.london.gov.uk/sites/default/files/londons_grassroots_music_venues_-_rescue_plan_-_october_2015.pdf)

- 5.14 The third UK Music report '*Wish You Were Here 2016*¹⁷ gives an updated quantified picture of the economic impact of live music and music tourism across the UK. Finally, July this year saw the publication of the Local Government Information Unit (LGIU) report '*Building a Vibrant Night Time Economy*' (July 2016).¹⁸

The Live Music Sector in Brighton & Hove

- 5.15 The city has a population of 276,000 of which 36,000 are students. Brighton & Hove has two universities with 24,343 full time students on its campuses.¹⁹ Our universities contribute over £1bn to the city's economy. In addition there is BIMM Brighton with a total student population of approximately 1,000 students. Brighton & Hove also has 49 language schools. This helps to provide a supply of people who both want to go to see, and play, live music in the city.
- 5.16 Brighton & Hove has 1,403 premises which are licensed under the provisions of the Licensing Act 2003. Licensing policy supports entrepreneurial activity, promoting the city's businesses, supporting the growth of creative industries sector and extending the business improvement district. The city has a collection of large, medium, and small music venues including: The Dome, The Brighton Centre, Concorde 2, the Green Door Store, Komedia, The Hope and Ruin, Sticky Mike's Frog Bar, the Prince Albert, and many more including churches such as St Georges and Bartholomews.
- 5.17 The council has 60 open spaces which are used for events and 18 of these have premises licences. Last year 250 events were held on these sites. Festivals held in the city or surrounding areas include Together the People in Preston Park, and this seems to be a growing area of live music in the city, although outdoor events were not within the remit of this panel.
- 5.18 Brighton & Hove has taken a leading role in the national consortium, the Cultural Cities Network. The cultural offer has grown through new festivals, venues and organisations developing in or moving to the city.
- 5.19 The city has the highest level of current arts engagement¹⁹ outside London and the seventh highest out of 150 in the country at 61.2%. Brighton & Hove is known for its colourful and interesting arts and creative industries which attract tourism and new businesses. About one in five businesses and 10% of jobs are in the arts or creative industries. The city currently hosts around 60 festivals each year including the largest arts festival in England, the Brighton Festival (and its Fringe) with live music a significant component of the programme.

¹⁷ (http://www.ukmusic.org/assets/general/FINAL_WYWH_2016_print_small.pdf)

¹⁸ <http://www.lgiu.org.uk/wp-content/uploads/2016/07/Building-a-vibrant-night-time-economy.pdf>

¹⁹ 2015 figures

- 5.20 Brighton & Hove also hosts the Great Escape, a three day festival in May where numerous bands play in music venues across the city. It is now an important part of the music festival calendar in the UK. An Event Report from 2012 estimated that the spend of festival attendees to be over £4m.²⁰ While the 2016 festival featured 450 shows and drew its largest ever crowd,²¹ a witness expressed concern to the panel as to whether there is a shortage of music venues during the Great Escape.²²
- 5.21 In May 2016, the 3rd Music Cities Convention was held in Brighton & Hove with 78 cities represented. A common theme throughout the convention was the importance of communication between policy makers, creative leaders, the public and all sectors whose combined efforts will achieve a prosperous music economy.

Potential for growing the sector

- 5.22 Evidence to the panel from BIMM emphasised that:

*"...Brighton & Hove has the second largest number of music professionals and it may grow as London prices out this sector."*²³

Is Brighton & Hove's unique offer causing grassroots venues to fail?

- 5.23 The Music Venues Taskforce report highlighted one of the external forces which was putting unintended pressures on grassroots venues:

*"London's popularity as a place to live, work and study continues to increase. As a result of increased demand for accommodation, rents are increasing and some landlords are choosing to sell their properties to developers."*²⁴

- 5.24 The situation where business premises, including pubs and venues, are being converted into residential accommodation is a situation which is also being replicated in Brighton & Hove and other cities in the UK. It is also becoming increasingly attractive to develop residential accommodation in areas of the city, which had previously predominantly housed businesses.

The financial vulnerability of grassroots live music sector in Brighton & Hove

- 5.25 While there is growing recognition of the value of live music, a key reason this panel looked at the smaller music venues in the city (also known as grassroots music venues), was due to concerns about the vulnerability of the sector. These smaller venues, such as the back rooms of independent pubs,

²⁰ Great Escape Event Report 2012

²¹ http://www.theargus.co.uk/news/14509808.Festivals_draw_thousands_to_Brighton_and_Hove/

²² Phil Nelson, evidence to the panel

²³ Phil Nelson, evidence to the panel

²⁴ (https://www.london.gov.uk/sites/default/files/londons_grassroots_music_venues_-_rescue_plan_-_october_2015.pdf)

are described by the Music Venues Trust as providing a place for bands to play who are not yet commercially successful enough to play in larger venues, or do not wish to.²⁵

- 5.26 Mark Stack who started the petition in Brighton & Hove which triggered this policy panel, highlighted that there was not much money in the music sector, especially grassroots venues, with many people having to treat it as a hobby. That venues such as “...*the Hope & Ruin is based on passion and the pub could make more money if it did not hold live music events.*”²⁶

That:

*“You will not get the David Bowies of this world if you do not give them a chance.”*²⁷

- 5.27 But he felt that the sector was viewed by the council as being able to “...*take care of itself.*”²⁸ Jordan Smith, from local band the Xcerts, described Brighton & Hove as seeming like a Mecca for bands but they did still have to put up with “*poor conditions and disrepair*” when playing a gig.²⁹

The closure of a music venue

- 5.28 The most significant outcome for a music venue facing the challenges outlined in this panel report can be that the venue will either close down or cease to host live music events.

- 5.29 The report for the Mayor of London warned that:

*“Between 2007 and 2015, London lost 35% of its grassroots music venues, a decline from 136 spaces programming new artists to just 88 remaining today...Those venues were big players in the music history of London, they fed the UK’s £3.8 billion music industry with a stream of talented acts.”*³⁰

- 5.30 Reasons they identified for venue closure in London included:

- Rising property values – causing venues to be turned into residential accommodation
- The planning system
- Licensing requirements
- Police priorities

²⁵ <http://musicvenuetrust.com/2015/03/understanding-small-music-venues-a-report-by-the-music-venue-trust/>

²⁶ Mark Stack, evidence to the panel

²⁷ Ibid

²⁸ Ibid

²⁹ Jordan Smith, evidence to the panel

³⁰ London Grassroots Music Venues Rescue Plan, 2015, https://www.london.gov.uk/sites/default/files/londons_grassroots_music_venues_-_rescue_plan_-_october_2015.pdf

- Competition from state subsidised venues in other European countries.³¹

5.31 In recent years there has been a shift in national legislative frameworks and in particular progressive deregulation of the Licensing Act 2003. This has meant that premises which wish to have live music between 8.00am and 11.00pm with an audience of less than 500 no longer require a licence, and there is therefore no provision for use of licensing conditions to manage and mitigate noise impact.

5.32 Deregulation of national planning legislation has made it easier for premises to change use without requiring planning permission, which removes the opportunity for the local authority to impose planning conditions requiring sound insulation and noise mitigation measures to protect local residents from the noise impact of live music venues. This has resulted in more residential accommodation being established close to existing live music venues, without the protection of planning conditions requiring sound insulation and noise mitigation measures.

5.33 The Health Act 2006 introduced a ban on smoking in premises. Customers and staff now wishing to smoke need to do so out in the street, outdoor gardens and seating areas. This is another challenge for venues to manage. People noise outside is intermittent, varies in character, can attract attention and is very difficult to mitigate. Later opening hours means this noise is happening when neighbouring residents want to sleep. Security staff managing outside areas can only have a limited impact. Noise from customers outside on private land could be deemed to be a statutory noise nuisance depending on the character, duration and frequency of the noise, and how it affects a person in their home.

5.34 Mark Davyd of the Music Venues Trust told the panel that they had identified 21 different reasons for venues closing down.³² Brighton & Hove has also seen its share of music venues close, including the Blind Tiger (see earlier case study) and the Freebutt (which is explored below as a case study). Mark Stack believed that:

“Venues are scared and can be closed down and don’t know why. Even though piped music in a pub tends to be louder than a band.”³³

5.35 A noise abatement notice can only require the abatement of the noise nuisance and the prohibition of a recurrence or occurrence. It cannot require closure of premises. Closure powers for both domestic and licensed premises are now provisions in the Anti Social Behaviour Crime and Policing

³¹ Ibid

³² Mark Davyd, evidence to the panel

³³ Mark Stack, evidence to the panel

Act 2014. This new provision has never been used for closure of licensed premises.

Case study: The Freebutt

The Freebutt was a long established live music venue in the City and attracted a large number of new bands. It is an old building that was never built and designed with sound insulation. Many years ago it was the victim of a new housing development being developed around it and housing being built on the party wall.

Over the years noise complaints were received, however, the most recent complaints in 2010 related to noise from the live music. These complaints were investigated and discussed with the operators of the Freebutt, who were very responsive to finding solutions. The noise was a statutory nuisance and a noise abatement notice had to be served under the statutory duties of the Environmental Protection Act 1990. After extensive dialogue between the venue operator and the local authority, the premises felt it had to close. This followed many attempts to install sound insulation to minimise the impact of live music. However, this was work to an old building and retrospective sound insulation can be costly, complex and it is not an exact science to remove low frequency structure-borne noise, and identify transmission pathways between a music venue and a home.

The closure of the Freebutt was mentioned by a number of witnesses to the panel. Andy Rossiter who used to run the Freebutt explained that when they were served with a noise abatement notice, the key issue for the Freebutt was a “lack of knowledge” on how to deal with it. It was clear that this closure had a significant impact on the live music sector at the time; with witnesses describing it as a “tragic story” and that the venue had been “a real starting point for so many bands.”

The panel's evidence

5.36 The panel held a day long evidence gathering session to hear both from those working in the live music sector, locally and nationally, as well as council officers who are responsible for regulating this sector. The panel heard from the following witnesses:

Name	Job Title or role	Organisation
Rob Dawson	Economic Development Project Officer	Brighton & Hove City Council (BHCC)
Mark Stack	Petition Organiser	Zooberon Events
Mark Davyd	Founder and CEO	The Music Venue Trust (a national campaigning organisation)
Phil Nelson	Head of Music Business	BIMM
Chelsea Rixson		BIMM
Suzy Moosa		BIMM
Steven Ansell	Band member	Blood Red Shoes
Jordan Smith	Band member	XCerts
Sally Ann Oakenfield	Creative Director and booker	Sticky Mike's Frog Bar and The Hope & Ruin
Simon Walker		Brighton Ltd Music Venues
Andy Rossiter		Love Thy Neighbour Music Promotion
Annie Sparks	Joint Acting Head of Regulatory Services	BHCC
Jonathan Puplett	Principal Planning Officer	BHCC
Mike Sansom (gave evidence in writing)	Building Control Manager	BHCC
Jim Whitelegg	Licensing Team Manager	BHCC
Simon Court	Senior Lawyer	BHCC

Written evidence to the panel

5.37 All Councillors, local MPs and Local Action Team (LAT) Chairs were written to and advised of the evidence gathering day, and informed of the terms of reference of the Policy Panel. Other local authority Environmental Health teams were also contacted. While the panel only received a few responses, these have been used to develop this report.

Many emails were received in relation to a #NightlifeMatters manifesto.³⁴ The majority of these emails were generic and said the following:

“We believe that nightlife is a vital part of UK culture and way of life, and must be protected. Too many venues have closed in the last decade due to a lack

³⁴ <http://nightlifematters.com/>

of understanding about the benefits of nightlife, causing huge loss of culture, social spaces, jobs and economic prosperity. We believe that councils, councilors and MPs should take into consideration the huge benefits of a thriving night time economy, and take measures to support these businesses operating at night. We also support the points laid out in the #NightlifeMatters manifesto.”³⁵

5.38 In addition the witnesses invited to the evidence gathering day were encouraged to submit in advance what they perceived to be the key barriers, or ‘brakes’, in the sector and what could be done to address them. These are quoted in this report in the relevant areas and are included in full at Appendix 1.

What did the evidence to the panel show?

5.39 The evidence gathered by the panel can be categorised into six themes:

1. **Appreciating the value of the sector to the city**, both in terms of its cultural offer and financial contribution. However it is a sector which struggles with financial viability and the panel heard about the pressure that this can place on those running music venues, promoting evenings and playing in bands
2. The need for a greater awareness and dialogue about **how the sector is regulated**; especially as some of the witnesses working in live music were not fully aware of the impact of the deregulation in the sector
3. Striking a **balance between the needs of residents and venues**
4. Encouraging and enabling younger people and disabled people to **access** live music
5. The vital role music venues play as part of the **night time economy**
6. **Building Partnerships** with many witnesses hoping that they could build a more supportive and sharing relationship with the council.

5.40 This section of the report looks at the evidence gained by the panel in terms of these six themes and compares the evidence to the issues being raised nationally. The recommendations of the panel are included at the relevant section, to show how the panel responded to the evidence they heard.

³⁵ Emails sent to the panel

Theme 1: Appreciating the value of the sector to the city

In brief:

Although the live music sector brought in almost £50m to the city last year, grassroots venues often struggle to break even. They would benefit from the kind of public funding that other art forms such as dance can attract. Evidence to the panel suggested that the council could help by offering rehearsal space to bands in their premises and bidding for funding to help music venues. The city would also benefit from having more medium-sized venues as they are able to attract bigger bands to come and play in the city. This would offer greater choice, stop people from having to travel to other towns to see their favourite bands and might give local bands the opportunity to support bigger bands.

Why do we need to support small, grassroots, music venues?

- 5.41 Rob Dawson from Brighton & Hove City Council (BHCC) opened the evidence gathering meeting by emphasizing how vital it is to “...*safeguard and nurture the music sector and small venues in the city.*” He felt there was a “*need for a consensus between residents, businesses and music venues.*”³⁶
- 5.42 Andy Rossiter, a music promoter, explained the value of live music to the cultural offer of the city:
- “Brighton has a [high] number of bands and venues compared to a location like Southampton. No one stays there after college as there is nothing to do.”*³⁷
- He also warned that if the sector did not receive greater support then bands could “...*all be in Hastings soon, as it’s cheaper.*”³⁸
- 5.43 Mark Davyd of the Music Venue Trust was concerned whether the city was maximising its opportunities. His engagement with this sector had led him to believe that “...*Brighton could do an enormous amount more*” with its live music. He was concerned that there was a “*lack of understanding of what venues do*” and hoped their value to the city could be recognised.³⁹

Resources for grassroots venues

- 5.44 Phil Nelson from BIMM Brighton explained that small venues:

³⁶ Rob Dawson, evidence to the panel

³⁷ Andy Rossiter, evidence to the panel

³⁸ Andy Rossiter, evidence to the panel

³⁹ Mark Davyd, evidence to the panel

“...give bands the first step, but 50% of them make a loss. There are high costs and may only be selling tickets for £3. Hard to cover costs, so can't really pay bands and the promoters etc. often work for free.”⁴⁰

It was hardest for smaller venues and smaller bands to operate in this sector. He was concerned that venues did not have sufficient funds to develop as they were “*struggling to break even.*”⁴¹

Would funding the sector help?

5.45 The importance of live music in the city led the council to help fund the Great Escape Festival. Some of the witnesses referred to the funding, including from the Arts Council, which was available for the live music sector in areas such as Aberdeen. Andy Rossiter expressed his concern that:

“Grassroots music in the UK is poorly supported – none of the venues or promoters receives funding. As a result the industry survives on a shoestring and is of a lower quality compared to the rest of Europe. Promoting is essentially gambling and involves a lot of risk, where even busy shows can make a loss while ancillary industries (restaurants, pubs, car parks, hotels, grocery shops, transport etc.) benefit from our activity.”⁴²

5.46 The panel heard that:

“In Europe 42% of the funding for grassroots venues comes from governments. Berlin is very supportive and has a can-do attitude to this sector which has high benefits to their music scene.”⁴³ Witnesses queried why other art forms such as ballet received funding “*...but live music is thought to make money and so there is no funding.*”⁴⁴

5.47 While council resources are so constrained it is extremely unlikely that it could offer direct funding to the sector, suggestions made by witnesses to resource the sector included:

- Council assistance, as well as from other relevant organisations, by offering resources in kind such as rehearsal space to bands in any appropriate buildings it owns such as community centres
- Where appropriate, using Section 106 money⁴⁵ to assist with measures to help venues. An example given was that if an arts resource was built, then this kind of funding could be used to sound insulate a music space.⁴⁶

⁴⁰ Phil Nelson, evidence to the panel

⁴¹ Phil Nelson, evidence to the panel

⁴² Andy Rossiter, written evidence to the panel (Appendix 1)

⁴³ Steven Ansell and Jordan Smith talking to Phil Nelson, evidence to the panel

⁴⁴ Ibid

⁴⁵ http://www.pas.gov.uk/3-community-infrastructure-levy-cil/-/journal_content/56/332612/4090701/ARTICLE

⁴⁶ Group discussion at evidence gathering meeting

Recommendation 3: Resources

The panel recommend that the partnership explore funding opportunities to assist grassroots music events and promote their value to the city.

Encouraging the growth of medium-sized venues

5.48 At present the city has a few middle-sized venues, such as the Dome (which hosts a range of arts events, as well as live music). While looking at medium-sized venues was not in the remit of the panel, they did hear evidence about the need for more of venues of this scale. Currently many of bands who would like to come to play in Brighton & Hove are not able to find a suitable sized venue to play, so their fans have to go to London or cities such as Southampton which have an appropriate sized venue. The money spent on this music tourism is lost to Brighton & Hove (which can be considerable as it includes travel, eating, drinking and possibly staying in hotels).

5.49 Anna Moulson of Melting Vinyl wrote that:

“We need a 750-1000 size venue at present we have a lot of 100-150 and 300-500 but then there is a big gap.”⁴⁷

Andy Rossiter, a music promoter, wrote that:

“My business relies on there being plenty of thriving music venues in central Brighton of varying sizes and specialities.”⁴⁸

Recommendation 4: Mid-size music venues for Brighton & Hove

The panel recommend that the partnership explore with the Council how City Plan 2 could be used to develop mid-size music venues.

Music venues – nationally and in London

5.50 Appreciating the value of the music sector is a common theme of the recent national reports, as well as a London-focused report, on this issue which were described earlier in this panel report. These reports investigated both the financial value of the sector, as well as its cultural value.

5.51 The Music Venue Trust report⁴⁹ shows that the UK independent venues represent a diverse sector which plays a vital role in both the music industry, and broader cultural sector, and has a positive impact on businesses,

⁴⁷ Anna Moulson, written evidence to the panel (Appendix)

⁴⁸ Andy Rossiter, written evidence to the panel

⁴⁹ Music Venue Trust report

communities, and economies (both local and national). This report also reveals independent music venues to be under significant pressures financially, and one of their recommendations is the need for investment. This is supported by the evidence gathered by this policy panel.

5.52 The Mayor of London’s Music Venues Taskforce report⁵⁰ showed that 35% of London’s grassroots music venues have been lost since 2007. The recommendations from this report were seen to be a rescue package to halt the decline in grassroots music venues with the aim of stabilising the sector, stimulating investment, and bringing a change of attitude to music venues. A key recommendation of the Taskforce was to create a Night Time Commission and London Music Board which are to be key drivers in cultural and economic regeneration. Another recommendation was to encourage local authorities to implement relief on business rates, with full relief for grass roots venues.

5.53 The report by UK Music in 2016 report details the economic impact of live music and music tourism in the UK and provided the figures for the table below:

Table 1: Comparison across the UK of economic impact of live music and music tourism in 2015⁵¹

	UK	London	South East	Brighton
Total direct and indirect spend generated by music tourism	£3.7 billion	£967 million	£455 million	£45 million
Number of music tourists	27.7 million	3.2 million	890,000	154,000
Number of full time jobs sustained by music tourism	39,034	7529	5032	481

The LGiU report sees the night time economy as an opportunity to drive business growth, and build vibrant and creative places where people want to live.⁵²

⁵⁰ Mayor of London Taskforce report

⁵¹ Figures taken from UK Music 2016 report, Wish You Were Here
http://www.ukmusic.org/assets/general/Wish_You_Were_Here_2016_Final.pdf

⁵² <http://www.lgiu.org.uk/wp-content/uploads/2016/07/Building-a-vibrant-night-time-economy.pdf>

Theme 2: Regulation of the sector

In brief:

Over the years a range of laws have been brought in across various regulatory areas such as licensing, planning and noise. This has been followed by uncoordinated deregulation in areas such as planning and licensing. This has happened without co-ordinated policies at a national and local level. The impact of this is that residential accommodation and live music venues are being thrown together without effective controls such as planning conditions, licensing conditions and not supported by co-ordinated policy decision in these areas.

5.54 A key focus of the evidence gathering was to look at the regulation of the sector and its impact on venues and residents. The panel has specifically looked at the following areas of regulation:

- The role of enforcement policies
- Planning and Building Control
- Licensing
- Noise abatement
- Smoking ban.

5.55 National legislation sets out how the council should regulate and enforce these areas. For example the Environmental Protection Act 1990 places a statutory duty on a local authority to serve a noise abatement notice when a statutory noise nuisance has been identified. There is no discretion in this process.

5.56 In some cases, this legislation is supported by national and local guidance. For licensing there is both national guidance provided by the Home Office, and in addition Brighton & Hove City Council has a local Statement of Licensing Policy. This is a good example of where there is both national and local guidance supporting decisions in relation to licensing. This helps to ensure consistent and transparent decision processes, while at the same time addressing local needs. There is a risk that local and national guidance can be contradictory in certain areas and lead to confusing messages for the live music sector.

Enforcement Policy

5.57 As with any regulatory processes, case law and enforcement policies are there to inform the decision making process. The council has a corporate enforcement policy and there are also specific enforcement policies for Environmental Health, and Licensing. These policies support, and

supplement, specific guidance on enforcement action contained in the national Statutory Code of Practice for Regulators.

5.58 In 2004 Philip Hampton was asked to lead a national review of regulatory inspection and enforcement. His report, published in March 2005, set out a programme to reduce the burdens on business created by regulatory systems. The report urged regulators to:

- Become more risk-based in their inspection and information requirements
- Focus greater effort on improving advice and guidance to help businesses which want to comply
- Deal more effectively with persistent offenders.

5.59 The Hampton Report set out a series of principles which it recommended all regulators adopt. The council's corporate and Environmental Health and Licensing enforcement policies are based on these Principles.

The Hampton Principles

•**Risk Assessment:** Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most

•**Accountability:** Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take

•**Inspections and other visits:** No inspection should take place without a reason

•**Information Requirements:** Businesses should not have to give unnecessary information, nor give the same piece of information twice

•**Compliance and Enforcement Actions:** The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.

•**Advice and Guidance:** Regulators should provide authoritative, accessible advice easily and cheaply.

•**Economic Progress:** Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

Planning and Building Control

Building Control

5.60 This section now looks at the regulation and enforcement in relation to the Building Regulations. These specify how building should be built and include requirements in relation to sound insulation of buildings, such as music venues.

Mike Sansom, BHCC's Building Control Manager was asked by the panel:

"If residential premises are established close to or adjoining or above a live music venue can the Building Regulations require sound insulation? If so who pays for that."

5.61 His written response was that:

"If a new residential building is provided adjacent to building that has a different use i.e. a public house with live music, then the new building should be constructed to ensure that a reasonable level of sound insulation exists from the non-residential use and the residential use. We would anticipate that the developer of the new building would include such sound reduction measures to satisfy the Building Regulations. However, the level of sound reduction may not prevent significant noise from a music venue as the requirements of the Building Regulations are limited."⁵³

He was also asked by the panel:

"If a music venue is established adjoining a residential unit do Building Regulation require sound insulation?"

Mike Sansom explained that:

"An existing building that is open to the public that becomes used for music events would not require Building Regulations consent as we would not deem this to be a change of use i.e. the building was open to the public and still is."⁵⁴

5.62 Mike Sansom has subsequently clarified that:

"...if a light industrial premises were to change use to a live music venue i.e. a non-public building to a public building this is deemed as a change of use. This will impose requirements of the Building Regulations that apply to this type of use. However, there are no sound insulation requirements as a

⁵³ Mike Sansom, written evidence to the panel

⁵⁴ Ibid

*result of a change use to a public building, other than where the public building is going to be used as a school.*⁵⁵

Planning

5.63 Jonathan Puplett, Principal Planning Officer for the council, gave evidence to the panel and then provided the supplementary information included below to explain the planning situation in Brighton & Hove:

“The process for managing and decision making in relation to planning applications is set out in national legislation. The requirement for Planning Permission can apply to both to new and existing developments. National and local planning policies seek to encourage and support cultural venues including live music venues (policy CP5 Culture and Tourism in City Plan Part One).

*National and local planning policies seek to ensure that development which would cause harmful noise disturbance to residents should not be allowed. In addition planning permission should not be granted where there is an existing commercial premises, such as a live music venue, and there is a proposal to introduce residential homes with inadequate protection. This issue is summarised by paragraph 123 of the National Planning Policy Framework (NPPF) (see box below): This national policy is a material consideration when considering a planning application for a new live music venue or for building residential homes next to an existing live music venue.*⁵⁶

Planning policies and decisions should aim to:

- avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;*
- mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions;*
- recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established; and*
- identify and protect areas of tranquility which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.*

⁵⁵ Ibid

⁵⁶ Jonathan Puplett, written evidence to the panel

5.64 Jonathan Puplett then explained that:

“Most of the live music venues in the city are well established and because they are so old, many are not subject to planning restriction. The planning laws and policies that are used today were first introduced in 1948, so any business and premises established before then would not have any planning restrictions. Some premises hosting live music may not in fact require planning permission if live music is an ancillary part of their operation, rather than forming a more primary element of their use. Therefore there are many buildings which host live music events intermittently and are not subject to the same planning controls of a new fully established live music venue or concert hall. Promoters and performers may not be aware of planning restrictions relating to the buildings that they are performing in. Even the operators and license holders of buildings may not be aware of planning restrictions. The complexities relating to this area of regulation would be a reason for introducing an online resource providing clear and simple guidance on these kind of issues.”⁵⁷

Planning Conditions

“Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.” (paragraph 206 NPPF)

5.65 Jonathan Puplett explained to the panel that:

“If a new venue is proposed which does require planning permission, Brighton & Hove City Council can apply planning conditions, to restrict hours of operation, capacity of the venue, and to secure sound proofing measures. Planning conditions are attached to planning consents to mitigate the impact of a development including noise and light, the council uses national guidance to formulate their planning conditions.”⁵⁸

Deregulation and Permitted Development Rights

5.66 Jonathan Puplett informed the panel that:

“Some developments can change use without requiring planning permission. In recent years national deregulation of planning legislation has enabled more development to change use without always needing planning permission. This has included office accommodation changing to residential use.”⁵⁹

⁵⁷ Written evidence to the panel from Jonathan Puplett

⁵⁸ Ibid

⁵⁹ Written evidence to the panel from Jonathan Puplett

The London Mayor's Music Venues Taskforce report also makes reference to the issue of office accommodation being allowed to convert into homes without the need for planning permission. The report goes on to say that:

*"...as a consequence, venues that have happily existed alongside office space for years are now facing residents moving in who expect quiet enjoyment of their homes in the evening. There is widespread concern that as a result of new Permitted Development Rights environmental noise assessments can be bypassed and more residents will find themselves living near sources of noise."*⁶⁰

- 5.67 This area of deregulation has resulted in residential accommodation being located next to long established live music venues, and complaints being made about noise from the live music venue. Then noise abatement notices being served on the live music venue requiring sound insulation and this having a cost impact on the venue.

Prior Approval

- 5.68 However, Jonathan Puplett in his written evidence explained that more recently the impact of this deregulation has been recognised and a 'prior approval' process has been introduced. In effect this is an early screening process, where a person wishing to change a premise from office to residential use is required to apply to the council to seek confirmation of whether the prior approval conditions are met. If it is decided that there will be noise consequences, a full planning application is usually required. This then enables planning conditions to be attached to the consent and therefore require sound insulation and other conditions.

Article 4 Directions

- 5.69 Jonathan Puplett explained to the panel that:

*"We have highlighted that as a result of deregulation some premises do not require planning permission when changing use e.g. from office to residential. In 2015 a further permitted development right was introduced allowing change of use from A3/A4 public house to retail use (A1). Where this is the case there a legal process called an Article 4 Direction which can geographically control where these permitted changes may be applied. **'A public house considered to be of value as a live music venue could be protected through an Article 4 Direction or through registration as an Asset of Community Value (ACV).'**'(listing or nomination as an Asset of Community*

⁶⁰ Mayor of London report

*Value removes the pub to retail permitted development right). Both A4 Directions and ACV have to be justified and require evidence.*⁶¹

*Wandsworth Borough Council has in fact recently introduced a single Article 4 Direction which protects 120 of the most valued Public Houses in their borough.*⁶²

5.70 Simon Court, of the council's legal team, told the panel that:

*"For a venue such as the Green Door Store, Article 4 would offer protection because of its city centre location [however]...Case law may not agree with the Mayoral report on music venues and the Ministry of Sound case which is a 'planning decision with a huge amount of room for legal challenge.'*⁶³

5.71 He cited relevant case law, such as the Camden case, *"...which focused on offices being changed into residential accommodation, and the requirement for 'prior approval' conditions as part of the permitted development rights. After the Camden case, it was determined that decision makers have to take into account whether the proposed change of use would be prejudicial to existing businesses"*.⁶⁴

Deed of Easement and Agent of Change Principle

5.72 The Ministry of Sound, a club in London, faced problems when an apartment block was proposed immediately opposite the club. They spent a significant sum in legal, consultancy and planning costs to protect the club from future noise complaints. This case resulted in:

- Deed of easement
- Agent of change principle.

These changes are likely to have a growing importance in the planning and development of Brighton & Hove.

Deed of easement

5.73 According to the Music Venues Taskforce report the Deed of Easement gave the Ministry of Sound:

⁶¹ Jonathan Puplett, written evidence to the panel

⁶²

http://www.wandsworth.gov.uk/news/article/13477/wandsworth_council_protects_120_pubs_from_red_evelopment⁶²

⁶³ Simon Court, evidence to the panel

⁶⁴ Ibid

“...the legal right to make a noise at existing levels, meaning that new residents essentially ‘buy into’ the club’s ongoing operations, rather than being able to object to it.”⁶⁵

Agent of change

- 5.74 This principal places the responsibility for noise management measures on the ‘agent of change’ or the incoming individual or business. It has been adopted successfully in parts of Australia and the United States.

Annie Sparks told the panel that the:

“Agent of change principal can work but relies on a huge amount of mediation work and managing change.”⁶⁶

Jonathan Puplett suggested to the panel that:

“Mapping of all current live music venues would be a constructive step forward, as under planning applications, and applications for prior approval, we are required to consult properties that immediately adjoin the site. However a neighbouring premises any further away would not necessarily be consulted and possible noise concerns may not be picked up as an issue during the course of considering an application. Were all venues to be mapped it would be easier to identify them when considering, for example, applications for new residential development close to a live music venue if not immediately alongside.”⁶⁷

- 5.75 Annie Sparks explained that when a person sells their home they need to declare whether they have complained about noise from commercial or residential premises.

“New people moving in tend to be more accepting of that noise, which is a kind of zoning.”⁶⁸

The specific establishment of such zones for grassroots music activity is one of the recommendations of the Music Venues Taskforce report, to encourage developers to ‘create new, high quality music venues’. This report emphasises that:

“More can be done to recognise live music venues in planning policy and provide guidance for decision makers.”⁶⁹

⁶⁵ https://www.london.gov.uk/sites/default/files/londons_grassroots_music_venues_-_rescue_plan_-_october_2015.pdf

⁶⁶ Annie Sparks, evidence to the panel

⁶⁷ Written evidence to the panel, Jonathan Puplett

⁶⁸ Annie Sparks, evidence to the panel

⁶⁹ See ref 65

- 5.76 The panel are aware that significant changes are happening nationally and want to ensure that Brighton & Hove is keeping up with these changes and that the Planning Service and councillors are fully aware of the implications for the city. Given the advice that these changes could be open to legal challenge, it will also be vital to keep up to date with how case law develops. This area will be a key issue for the Night Time Economy Partnership to explore and is intended to be a specific remit for them.

Licensing

- 5.77 Under the provisions of the Licensing Act 2003 there is a statutory duty to meet with the 4 licensing objectives:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm.⁷⁰

This is a national requirement and a premises licence is required where there is sale of alcohol, and or regulated entertainment. The Deregulation Act 2014 introduced deregulation in relation to some aspects of the Licensing Act 2003. Now live music is no longer a licensable activity when it takes place between 8.00am and 11.00pm with an audience of less than 500.

- 5.78 The council has a Statement of Licensing Policy. The purpose of this Statement is to promote the licensing objectives listed above and covers the following areas:

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

This Brighton & Hove City Council Licensing Policy recognises the need to encourage live music, dancing and theatre. The policy states that the licensing committee will support the cultural zones, outdoor eating areas, food led operations, community pubs, live entertainment and protect living conditions in mixed residential and commercial areas.

Temporary Event Notices

- 5.79 Temporary Event Notices (TENs) provide an opportunity for live music events to take place where the restrictions and conditions on the premises licence will not apply for that particular event (even though deregulation means that

⁷⁰ <http://www.legislation.gov.uk/ukpga/2003/17/contents>

live music is no longer a licensable activity when it takes place between 8.00am and 11.00pm with an audience of less than 500). A TEN would enable live music to happen later and outside of these hours, and for a larger audience, and perhaps outside. Although deregulation has widened the opportunity for live music to happen without needing licence, it could in turn result in complaints.

- 5.80 The Statement of Licensing Policy specifically makes reference to these Temporary Event Notices (TENs). There are limitations to TENs, including a maximum duration of 168 hours for one TEN for up to 499 people and the number of TENs to cover one premise must not exceed 21 days per year. The Policy states that Licensing Authority will encourage bona fide community events.

Licensing Guidance recognises that TENs are a light touch process, not requiring specific authorisation. However, when considering TENs notifications the licensing authority will take into account the history. If the police or Environmental Health believe that allowing the premises to be used in accordance with the TEN will undermine the licensing objectives, they must issue an objection notice.

The Late Night Levy

- 5.81 The Licensing Committee recently debated consulting on introducing a late night levy, which is a charge that can be applied to alcohol licensed premises open between midnight and 6am. The Committee deferred any decision until proposed legislative changes affecting the Late Night Levy have been clarified by the Government in Spring 2017.

Jim Whitelegg, the Licensing Team Manager for BHCC, confirmed that it was a legal requirement for the council to produce a statement of licensing policy:

“Live music is recognised as a benefit, so valued and encouraged...[and] Licensing conditions have to be appropriate and proportionate. They vary from venue to venue. The police and trading standards take the regulatory lead on the issue of under 18s. If a license is new or being varied, then there is a 28 day consultation period for responsible authorities, such as police and environmental health, and other persons such as residents to make comment based on licensing objectives. Sometimes the applicant will agree conditions during this period. This will save the application going through a formal committee hearing .”⁷¹

- 5.82 Jim Whitelegg then explained the significant impact of the Deregulation Act of 2015 which means that:

⁷¹ Jim Whitelegg, evidence to the panel

“...that no licence is needed from 8am -11pm for unamplified music, but if amplified need a licence only for over 500 people. Recorded music has also been deregulated for licensed premises between 8am-11pm, for up to 500 people. Cafes and bars have always been able to apply for licences, but again will not need one for regulated entertainment between 8am-11pm for up to 500 people. Where there is a persistent noise problem from a premises there is an opportunity for a member of the public, and or the Police, and or the Council to request that the premises licence be reviewed⁷²”.

- 5.83 Jim Whitelegg explained to the panel that a Licensing Strategy group met every three months to discuss licensing policy issues and feed into the Alcohol Programme Board. While it was attended by residents, businesses, the police and fire authorities, music venues rarely came to the meetings. Jim Whitelegg then suggested that the Licensing Strategy Group could look at issues such as bouncers and underage gig goers.

Noise

- 5.84 There is sometimes a confusion about noise legislation relating to noise impacting on performers, staff and the public visiting a live music venue, and the noise coming from the venue and impacting on local residents.

The Control of Noise at Work Regulations 2005 places a duty on employers to reduce the risk to their employees' health by controlling the noise they are exposed to whilst at work. The provisions of these Regulations are not covered by the scope of the Policy Panel.

This next section will cover noise abatement and noise impacting on local residents in their home.

Noise Abatement

- 5.85 Annie Sparks, Joint Acting Head of Regulatory Services for BHCC, told the panel that the two key changes which had impacted on the sector are:

- Licensing Act 2003
- Smoking Ban imposed by the Health Act 2006.⁷³

The Licensing Act 2003 brought with it the opportunity for extended hours of opening for the sale of alcohol and regulated entertainment, and the smoking ban then brought people outside to smoke during these extended hours. This has brought noise complaints relating to both people noise and noise from music.

⁷² Jim Whitelegg, evidence to the panel

⁷³ Annie Sparks, evidence to the panel

What is a statutory nuisance?

5.86 Under the provisions of the Environmental Protection Act 1990 a local authority has a duty to investigate all noise complaints and where a statutory noise nuisance is identified the local authority has a statutory duty to serve a noise abatement notice. Legally noise nuisance is not set at a specific decibel level but instead is assessed in relation to the character, duration and frequency of the noise and most importantly how a person is affected in their home, rather than a passerby.

How is the evidence collected?

5.87 Noise diaries completed by the person affected, noise recording equipment left in their home, and visits to a person's home to witness the noise, are all methods of collecting evidence to assess if a noise is a statutory nuisance. Evidence gathered and the assessment made '*shall have regard to the legal test of 'balance of probabilities'*'.⁷⁴

Noise Abatement Notices

5.88 The council has a statutory duty to investigate all noise complaints. The council uses noise abatement notices where the noise constitutes a statutory noise nuisance. This includes noise from both domestic and commercial premises, including; construction sites, noise from kitchen ventilation fans, and also live music venues. It requires the noise to be at an acceptable and reasonable level. In some cases this may be need to be very quiet to enable a person to sleep.

⁷⁴ <http://www.legislation.gov.uk/ukpga/1990/43/contents>

Noise Abatement Notices in Brighton & Hove

A noise abatement notice shall be served on the person responsible for the noise and/or the occupier and/or owner of the premises. This is also a statutory duty with no discretion. A noise abatement notice can be used to stop a music event happening where it is believed that it will cause a nuisance, such as a rave or prohibit the recurrence of the noise where the noise nuisance has already been identified.

The noise abatement notice may require prohibition of the noise nuisance 'forthwith', or where works are required to abate the noise the notice shall define a reasonable time for compliance.

The noise abatement notice may include a schedule of works to abate the noise nuisance. The majority of noise abatement notices served by Brighton and Hove City Council, however, simply require abatement of the noise nuisance and do not include a schedule of works. This enables the person served with a notice to explore reasonable options to comply with the notice. This is particularly relevant to live music venues as there may be a number of options on how to reduce noise levels. This may include reducing bass levels and or volume, shutting doors and windows, changing the hours and frequency of live music events, and or more complex sound insulation works. Legally this must have regard to reasonable cost, and available technology. A person served with a noise abatement notice has a right of appeal and there are a number of grounds of appeal detailed in the Act.

Enforcement

- 5.89 Noncompliance with a noise abatement notice is a criminal offence and the evidence gathered has to be to the legal test of 'beyond all reasonable doubt'. There are also provisions to seize noise making equipment, and where on private land this will require a warrant from the Magistrates Court.

A noise abatement notice cannot require closure of a premise. It can only require the abatement of the noise nuisance and the prohibition of a recurrence or occurrence. Closure powers for both domestic and licensed premises are now provisions in the Anti Social Behaviour Crime and Policing Act 2014.

5.90 The table below gives the context of noise abatement notices served across the City since 2012.

Table 2: The character and number of noise abatement notices served across the City since 2012

	2012/13	2013/14	2014/15	2015/16
Number of Noise Complaints Received	3162	2779	2706	2411
Industrial Noise	0	0	1	0
Domestic Noise	84	69	45	28
Commercial /Leisure Noise including music venues	12	25	21	24
Construction Noise (Not including notice provisions under the Control of Pollution Act 1974)	0	0	1	0
Noise Equipment in the Street	0	0	2	0
TOTAL NOISE ABATEMENT NOTICES	96	94	70	52
The number of commercial premises where a noise abatement notice was served for noise from live and or amplified music and or noise from people	5 3 of these were licensed premises.	10 8 of these were licensed premises	9 6 of these were licensed premises	9 8 of these were served on licensed premises

5.91 In the last four years 11,058 noise complaints have been received by the council and during this period 33 noise abatement notices have been served in relation to music and people noise from commercial premises. This includes notices on raves, squats, holiday lets, and therapy centres. 25 of

noise abatement notices on licensed premises were in relation to noise from people and or live and or amplified music.⁷⁵

The impact of noise abatement action on the industry

5.92 Mark Stack, the petition originator, suggested that it would be more productive if the council could talk:

“...to a venue about a noise abatement notice first. Make it a level playing field rather than us and them.”⁷⁶

5.93 Noise was a recurring issue raised by witnesses working in the live music sector, in particular:

- Noise abatement
- Noise restrictions. A band member did comment that some music is meant to be loud.’ Again this needs to be balanced by the needs of neighbours and the potential safety of the audience because of the potential for noise damage.
- Curfews – that if curfews are too early it may make events impracticable (time to soundcheck and number of bands to be fitted on the bill) but the panel recognized the need to balance this with the needs of residents in the locality.

There was a recognition by witnesses working in the music sector that some venues were more suitable than others to hold events at louder noise levels, such as the Concorde 2 because it is not sited near residential accommodation.

Soundproofing music venues

5.94 The cost of soundproofing venues was highlighted by Mark Davyd who explained that research by the Music Venue Trust had found that it took an average of £10,000 per music venue to carry out acoustic measures.⁷⁷

Soundproofing of residential accommodation

5.95 Mark Stack told the panel there was a need for:

“...greater soundproofing regulations for residential developments. Especially an issue when there are new developments built next to existing venues – developers only need to follow domestic sound proofing regulations when converting adjoining buildings to residential when it’s obvious more is needed.”⁷⁸

⁷⁵ Figures provided by the services

⁷⁶ Mark Stack, evidence to the panel

⁷⁷ Mark Davyd, evidence to the panel

⁷⁸ Mark Stack, evidence to the panel

5.96 Sally Ann Oakenfield told the panel that they did have “...*regular conversations with the council about a persistent complainer.*”⁷⁹ This was vital as ‘*One person’s complaint can close a venue – such as the Freebutt.*’ Venues could end up feeling that they had to tell bands off continuously ‘...*to stop neighbours being annoyed.*’⁸⁰

5.97 Simon Walker, a witness with 30 years’ experience of running pubs and music venues, also highlighted the need to ensure that a noise abatement notice is served on the right person, which should be the Designated Premises Supervisor (the person who has the day to day responsibility for running the premises). This can become confusing if the owner of the premises is not aware of the notice.⁸¹

Smoking ban enforcement

5.98 Simon Walker, explained to the panel that the enforcement of the smoking ban in public places had resulted in significant numbers of people outside venues. He described it as:

*“...yet another condition that the venue has to consider, is it worth it just to have a band on Thursdays.”*⁸²

Enabling the music sector to understand regulation in the city

5.99 The witnesses who work in the music sector made a range of suggestions to enable a greater understanding of regulation of music venues for those who work in them, or wanted to express a concern about noise levels. These included:

- Making it obvious for a venue to find out what they need to do e.g. in respect of licensing conditions and who is responsible?
- Clear information at the venue about who is the right person to speak to about noise concerns
- Training sessions on licensing and other relevant information for venues, promoters and other stakeholders.

The panel believes that the above suggestions could be examined by the proposed Night Time Economy Partnership or the existing Licensing Strategy Group.

⁷⁹ Sally Ann Oakenfield, evidence to the panel

⁸⁰ Ibid

⁸¹ Simon Walker, evidence to the panel

⁸² Ibid

Theme 3. Balancing the needs of residents and the music sector

5.100 As part of the evidence gathering process, the panel received a limited number of written responses from the community and the concerns outlined included:

- The location of some venues in residential areas, such as the Old Market
- The end time of some music events
- The noise levels which can be generated by people smoking outside venues and coming to and from the event
- The importance of dealing appropriately to noise concerns of venue's neighbours without endangering the future of the venue
- The potential impact of the Shakedown Festival on the local community
- The potential growth of noise nuisance and anti-social behavior in residential areas due to licensing changes.

5.101 For example, the experience of a member of a residents' association near three venues in the city centre was that:

“Problems arise due to noise nuisance and antisocial behaviour - all venues are in the immediate vicinity of neighbours. Whilst these venues have conditions within their license with regards to noise levels etc., these are not always enforced and adhered to.”⁸³

They were concerned that:

“With recent changes in licensing policy which will see cafes being granted licenses until 11:30pm, we are concerned that live music, recorded music and late licenses on top of this could potentially be very damaging for our area. This is not West Street. We do not want to see venues granted alcohol and music licenses just to see them then sold on to someone who then turns them in to a club which trades on cheap booze, students and stag parties. This needs to be regulated with due consideration for local communities over and above the late night economy.”⁸⁴

5.102 Another resident living near a city centre venue expressed their belief that:

“Any live event venue placed in a residential area should have hours of performance attached to events held - e.g. the event should be over and attendees should have left the premises and the residential streets outside the venue by 10.30pm (this is quite a realistic time as many begin 7/7.30pm and performers generally cannot go on for more than 2.5 hours – this allows a good interval break as well for the venue to sell drinks etc.). Should the venue have a bar attached, this bar should have a closing of 11pm in a residential

⁸³ Written evidence to the panel

⁸⁴ Ibid

area. A venue in centre of town, party/pub/restaurant streets could more realistically have a closing time of 2am.”⁸⁵

5.103 However another resident, who also worked in the live music sector, felt that:

“Most pubs handle their music very carefully. On the whole, my experience of complaints about live music noise comes from people who move into an area where live music already occurs and has occurred for many years – and then suddenly wake up one morning and realise they have a pub opposite their house, and they complain to get it made quiet.

Usually those very same people have moved into that area because of the great vibrant pub life and when they have babies etc. suddenly their attitude changes.”⁸⁶

5.104 Annie Sparks (BHCC) explained that licensing changes meant that now the opening hours of venues were past 11pm but that:

“...residents found it easier when they knew when the noise was going to stop. Many music venues are in the middle of residential areas.”⁸⁷

Mark Davyd of the Music Venue Trust spoke of his concern that:

“Typically a council can place more than 20 licensing conditions on a music venue. Some are very out of date like the 100 Club in London which has a license condition relating to ‘unsuitable clothing’.”⁸⁸

“Licensing officers have a perception that residents’ needs are greater than that of music venues.”⁸⁹

5.105 Mark Stack told the panel that he believed that those running live music events, especially the venue managers, would be happy to come and talk to community groups.⁹⁰ Simon Walker felt that it was very beneficial if residents would first raise any issue with the venue, before approaching the council, because:

“Issues could often be sorted out between the resident and the venue. It is the hospitality industry so want to sort out the problems and find mutually agreeable solutions.”⁹¹

5.106 Simon Walker told the panel that complaints were usually made first to the council so:

⁸⁵ Ibid

⁸⁶ Ibid

⁸⁷ Annie Sparks, evidence to the panel

⁸⁸ Mark Davyd, evidence to the panel

⁸⁹ Mark Davyd, evidence to the panel

⁹⁰ Mark Stack, evidence to the panel

⁹¹ Simon Walker evidence to the panel

*“...the venue is not aware of the problem until told by an enforcement officer”.*⁹²

National Level

5.107 The Music Venue Trust’s report⁹³ sees the challenges relating to regulation, licensing, public perception, and the rapidly changing urban environment threatening the survival of music venues, with demoralizing effect.

The London Mayor’s report⁹⁴ sees grassroots music venues as cultural spaces, risk takers, hubs of innovation and place-makers, and they need to be recognised as such in policy documents. The report also highlights that music venues also need to enter day to day conversations of economists, planners, licensers, police, tourism experts, culture professionals and music industry decision makers.

5.108 The LGiU report⁹⁵ recommends building partnerships between all those with a stake in the area, police, local authorities, emergency services, businesses and communities, and sees this as an essential foundation on which to build a successful and safe night time economy.

Theme 4: Encouraging and enabling younger people and disabled people to access live music

Encouraging younger people

5.109 Many of the witnesses involved in the music sector were keen to explore how to enable younger people to attend gigs in the city. Steven Ansell, of the Blood Red Shoes, talked of going to gigs from the age of 14.

According to James Hann who provides licensing advice to venues in the city:

*“...there is a need to reconsider how to attract young people to gigs, especially as sales of music declines.”*⁹⁶

5.110 The BIMM witnesses felt *“...it is vital for young people to be able to see and play music. The Westbourne allows 14+ into gigs but this is a rarity.”*⁹⁷

Sally Ann Oakenfield, a venue booker in the city, gave the example of a young band called Grasshopper *‘...but none of their friends can come to their*

⁹² Simon Walker, evidence to the panel

⁹³ <http://musicvenuetrust.com/2015/03/understanding-small-music-venues-a-report-by-the-music-venue-trust/>

⁹⁴ https://www.london.gov.uk/sites/default/files/londons_grassroots_music_venues_-_rescue_plan_-_october_2015.pdf

⁹⁵ <http://www.lgiu.org.uk/wp-content/uploads/2016/07/Building-a-vibrant-night-time-economy.pdf>

⁹⁶ James Hann, written evidence to the panel (appendix 1)

⁹⁷ Phil Nelson, talking to Chelsea Rixon and Suzy Moosa, evidence to the panel

*gigs.*⁹⁸ She explained that if any band member is under 18 years old then there has to be a risk assessment. She really hoped that the panel would be able to come up with a recommendation to make gigs for over 14 year olds more viable.

Licensing conditions and age

5.111 When considering how to encourage younger people to live music events one of the key considerations is in relation to the licensing conditions. Typically this is to protect young people from access to alcohol.

⁹⁸ Sally Ann Oakenfield, evidence to the panel

Licensing Act 2003

One of the Licensing Objectives is in relation to protecting children from harm. The Licensing Act allows children under the age of 16 to be present in a licensed premises providing they are accompanied by an adult (aged 18 and over), except where there is a specific condition on the licence restricting the access of children. The statement of Licensing Policy identifies measures that are intended to address the need for the protection of children from harm. This includes emotional and physical harm which may be associated with licensed premises and certificated club premises (for example the exposure too early to strong language and sexual expletives, e.g. in the context of film exhibitions or where adult entertainment is provided).

It is intended that the admission of children to premises holding a premises licence or club premises certificate should normally be freely allowed without restricting conditions (unless the 2003 Act itself imposes such conditions or there are good reasons to restrict entry or to exclude

Brighton & Hove Statement of Licensing Policy

The statement of licensing policy states that where children are expected to attend a public entertainment, appropriate adult supervision will be required to control the access and egress of children and to protect them from harm. This will normally be an adult member of staff for every 100 children. Where the entertainment is music and dancing, 2 persons, licensed by the Security Industry Authority (door supervisors) should be employed for every 100 children but will be subject to advice within the Event Safety Guide. Nothing in this policy shall seek to override child supervision requirements contained in other legislation or regulations. For exclusively under 18 events reference should be made to police guidelines available from the Police Licensing Unit. The licensing authority recognises the Director of Children's Services as being competent to advise on matters relating to the protection of children from harm. Applicants shall copy their applications to the Director of Children's Services in its capacity as the responsible authority.

5.112 The panel heard that a key issue in encouraging underage gigs and gig goers related to licensing issues. Sally Ann Oakenfield, explained that:

“They never allow 14+ [years] into their venues [because] the restrictions are so great. It would cost a further £250 per show to have the extra doormen,

*which would not be viable for the business. It would seem that licensing don't want people under 18 to go to gigs.*⁹⁹

5.113 The BIMM witnesses suggested that one could have an all-ages show but:

*"Issue wristbands only to over 18s at the gig, so they are the only people who can buy alcohol. A venue called Headcandy had no alcohol licensing because it was supposed to be for teenagers but it could not cover its costs. Bleach is an example of a venue which uses wristbands for identifying who can drink."*¹⁰⁰

Jim Whitelegg suggested to the panel that this issue could be examined by the Licensing Strategy Group.¹⁰¹

Physical access to venues

5.114 The accessibility of music venues is a concern as grassroots venues tend to be located upstairs or in basements, with little or no seating, no lifts, and toilets which are not usually accessible. Disability access is not part of licensing conditions in England at present, although it is in Scotland. It is challenging to seek funding for improving the accessibility of venues, when margins are so tight in this sector

A recent survey by the Music Venue Trust found that 34.68% of the venues in the survey had no disabled access¹⁰² this is likely to be a particular issue in smaller venues which are not used solely for this form of entertainment.

5.115 Attitude is Everything is a pressure group to improve the access of deaf and disabled people to live music¹⁰³. They are concerned about the accessibility for those with hearing and visual disabilities, such as the impact of loud music on those going to music concerts and in the surrounding area.

⁹⁹ Sally Ann Oakenfield, evidence to the panel

¹⁰⁰ Phil Nelson talking to Chelsea Rixon and Suzy Moosa, evidence to the panel

¹⁰¹ Jim Whitelegg, evidence to the panel

¹⁰² Understanding Small Music Venues: http://www.musicvenuetrust.com/wp-content/uploads/2015/03/music_venue_trust_Report_V5-1.pdf

¹⁰³ <http://www.attitudeiseverything.org.uk/?gclid=CPIOzqKL7coCFalSwwodlAUleQ>

Gig going for people with learning disabilities

5.116 The witnesses praised the inclusivity of the project Gig Buddies (as well as Stay up Late) which promotes the rights of people with learning disabilities to have choices about their social life, including going to gigs. They recognise that traditional models of care have restricted the ability of people to go to see live music and other forms of entertainment in the evenings.¹⁰⁴

The panel would like to see the Night Time Economy Partnership look at the issues of improving access to live music venues for younger people and disabled people.

Theme 5: Music and the night time economy

National level

5.117 The value of the night time economy has received considerable national attention. In July 2016 the Local Government Information Unit (LGIU), produced a report on Building a Vibrant Night Time Economy.¹⁰⁵

This report recognises the challenges faced by local government including reform of local government finance, devolution, and Brexit, and how these impact on how councils function. It acknowledges positive steps that many local authorities are making around the night time economy in relation to the challenges of crime, public health and anti-social behaviour. The report sees the night time economy as an opportunity to drive business growth, and build vibrant and creative places, where people want to live. It identifies five recommendations for local authorities to achieve a vibrant night time economy.

1. **Building Partnerships:** Partnerships with all those with a stake in this area – police, local authorities, emergency services, businesses and communities – are an essential foundation on which to create a successful and safe night time economy.
2. **Diversify your economy:** Attracting restaurants, music venues, and other entertainment options to locate in your town centre will allow people to choose from a range of alternative activities to encourage a wider range of people into town in the evening and night time, and to reduce alcohol related crime and injury.

¹⁰⁴ Panel discussion <http://stayuplate.org/>

¹⁰⁵ (<http://www.lgiu.org.uk/wp-content/uploads/2016/07/Building-a-vibrant-night-time-economy.pdf>)

3. **Share intelligence:** Organisations involved with the night time economy are all busy collecting their own data to feed into their plans. Sharing this intelligence increases the insight and the value it can bring and supports a coherent strategy.
4. **Nominate a champion:** Nominate a single person who will be the single point of accountability for all things related to the night time economy will bring together all those working on these issues in the local area.
5. **Break down silos:** Often the night time economy is dealt with in a reactionary way, sorting out problems as they arise. But by working across the council silos a more proactive and positive approach can be taken.

The recommendations of the LGIU have informed the findings of the panel.

The night time economy in Brighton & Hove

5.118 Live music is a vital part of the night time economy of the city. A number of panel witnesses suggested that the city could benefit from a Night Time Mayor, a post which has been established in cities such as Amsterdam, with a Night Czar recently appointed for London. Mark Davyd of the Music Venue Trust explained that this kind of Mayor could offer both mediation and mitigation by enabling *“any resident to phone up and the Night Mayor to visit the source of noise and decide if too loud and try to resolve without the need for a complaint.”*¹⁰⁶

Sally Ann Oakenfield agreed that a Night Mayor would be able to:

*“...determine if complaints were vexatious or a real nuisance.”*¹⁰⁷

The Night Mayor could also carry out the suggested role of championing the night time economy.¹⁰⁸

Theme 6. Building partnerships

5.119 Some of the witnesses working in the live music sector expressed a hope that the council could take on a more supportive role, because due to their regulatory responsibilities, they could be currently viewed by music venues as an *‘aggressor’*¹⁰⁹.

Annie Sparks, from BHCC recognised that:

¹⁰⁶ Mark Davyd, evidence to the panel

¹⁰⁷ Sally Ann Oakenfield, evidence to the panel

¹⁰⁸ LGIU report

¹⁰⁹ Sally Ann Oakenfield, evidence to the panel

“If venues feel victimised there would be a value in bringing together the council and venues and we need to revisit how we communicate with venues especially when a complaint has been made about them.”¹¹⁰

5.120 Many witnesses suggested the need for a forum for those involved in the night time economy in Brighton & Hove to work together. Some of the suggested roles were to assist the sector and provide regular contact with people working in, and enjoying, the night time economy. Part of its role could be to both act as a ‘*platform or support*’¹¹¹ for the live music sector.

Recommendation One

To establish a Night time Economy Partnership.

Brighton & Hove City Council recommends that Brighton & Hove Connected brings together a range of partners to establish this partnership. Its membership will be drawn from:

BHCC, Sussex Police, the licensing trade, venues, NHS, local business leaders, transport providers, the creative industries - including the music sector, community groups and other relevant stakeholders such as universities, colleges and schools such as BIMM (British & Irish Modern Music Institute) Brighton).

¹¹⁰ Annie Sparks, evidence to the panel

¹¹¹ Andy Rossiter, evidence to the panel

Appendix 1 – ‘brakes’ identified by witnesses in the music sector

Each witness coming to give evidence in Session 1 of the panel meetings (i.e. who work in the live music sector in some capacity) were asked to identify the ‘brakes’ or the issues which had a negative impact on their work in the music sector. Those who responded are as follows:

Name: Mark Davyd
Organisation/role: Music Venue Trust. The Trust is a registered charity which acts to protect, secure and improve the UK’s grassroots music venue circuit
The noise/venue issues affecting my music business: Please note: MVT is not a music business, it advises venues, audiences, local, regional and national government on policies and approaches which might support its aims
1. Lack of cultural equivalency in all aspects of licensing, policing and control measures
2. A poorly understood sector, lack of informed debate around the role of music venues
3. Failure to capitalise on the social, economic and cultural benefits which music venues present
4. Inconsistency in approach
5. Failure to balance economic and residential concerns within city centres

Name: James Hann
Organisation/role: Licensing advice
The noise/venue issues affecting my music business:
1. The council could do more to promote the idea of community premises having the ability to apply to remove the requirement for a DPS – you will recall that the council were not aware of this provision and it can be a real lifeline for community based venues.
2. My personal belief is that the police have too much of a “rule” book that licensing officers adhere to when considering new applications, rather than considering each application on its merits. For example a food based pub receives representations from the police asking for drug (etc.) policies that are not appropriate for a food based establishment. I am not saying that a drug policy is not required for such an establishment, but the need to display drug related posters and challenge 25 posters!?
3. In terms of live music, I am not sure that venues are aware that most of

<p>them do not require a licence to play live music if they have a licence to sell alcohol for consumption on the premises or that no licence is required to play unamplified music anywhere (both for up to 500 people). I would have thought that a city wishing to push its live music would actively promote this more.</p>
<p>4. On a more general point there is a need to reconsider how to attract young people to gigs, especially as sales of music declines. Anything that can be done to promote non-mainstream artists and to promote and coordinate live music on a digital platform would be a positive, especially given the quantity and quality of the digital based companies in the city and the Brighton and City College</p>

<p>Name: SALLY OAKENFOLD</p>
<p>Organisation/role: MANAGEMENT CONTRACTOR // BOOKER // PROMOTER at Sticky Mike’s Frog Bar & The Hope & Ruin</p>
<p>The noise/venue issues affecting my music business:</p>
<p>1. Noise complaints are a constant concern... we do all we can to operate fairly and reasonably at all times. However one complaint can be a major issue. Which is a real worry at all times not to mention the constant fear of development.</p>
<p>2. Commitment to community driven and underground events threatened when everything is so profit driven... costs keep on rising.</p>
<p>3. A one size fits all approach to licensing premises. Being seen as a nuisance as opposed to an asset to the city.</p>
<p>4. The expectation that we will get it wrong as opposed to being seen and trying to do something positive.</p>
<p>5. A general lack of understanding surrounding how live music works and why it is so important for so many reasons.</p>

<p>Name: Anna Moulson</p>
<p>Organisation/role: Melting Vinyl</p>
<p>1. I think the information/training would be appreciated – when applying for St George’s Premises license there’s an expectation that everyone applying knows how premises licensing work how to maintain them and request changing policies (which is why MV recruited James Hann to support)– a handy pack and a 6 months meet post receiving license would be appreciated and useful. One central point to apply to cover Licensing/Police and Fire dept. when applying would be ideal as it was a lot of separate bodies with different approaches and ideas, The fire dept were particularly tough to deal with and had a very defensive than open</p>

attitude. Licensing were on call to answer questions and Police were very open which was positive.

2. With regard to Noise issues and how to anticipate problems, issuing equipment that organisation such as myself could use to monitor sound efficiently would be appreciated as it is expensive (Anna Moulson)
3. More opportunity for outside Bill- boards around town – there are a lot of people traffic on the streets and it would be welcome in the ever competitive market in the city
4. A music conference in the city which involved Brighton based people involved in the city would bring people together more, personally I would love to organise a grass roots freelance promoter festivals – looking at networking, training, growth and showcases for programming, Brighton is made up of a high percentage of freelance promoters compared to the rest of the country. We are the launching pad for a lot of up and coming acts and do support the local music scene.
5. The Dome is very expensive to hire and sometimes acts as competition to local promoters, i.e. they have more money to price out local promoters than work on co-pros with them.
6. We need a 750-1000 size venue at present we have a lot of 100-150 and 300-500 but then there is a big gap

Name: Andy Rossiter

Organisation/role: Love Thy Neighbour

The noise/venue issues affecting my music business:

1. My business relies on there being plenty of thriving music venues in central Brighton of varying sizes and specialities. Flexible licensing plays an important part in this to keep costs down for the venues allowing promoters to create artistically interesting programmes which helps perpetuate Brighton's creative image.
2. Grassroots music in the UK is poorly supported – none of the venues or promoters receive funding, as a result the industry survives on a shoestring and is of a lower quality compared to the rest of Europe. Promoting is essentially gambling and involves a lot of risk, where even busy shows can make a loss while ancillary industries (restaurants, pubs, car parks, hotels, grocery shops, transport etc.) benefit from our activity.

Name: Mark Stack
Organisation/role: Zooberon Events, Petition creator
The noise/venue issues affecting my music business:
<p>1. In my petition I stated it was non-hostile exercise and an attempt to open up the debate for the benefit for the whole city. Akin to my extended petition speech which we down so well with Councillors (attached) I'm writing a similar piece of background information to show the strategic importance of the city's live music scene in ways that I think you might not have considered. It will document areas where we can work together to not only help the music scene but also in turn reduce burdens on council staff. You will receive it by first thing Monday 11th at the latest. I want this whole process to a positive thing, an opportunity not only to protect the city but to also enhance its standing nationally and beyond. There are some instances where I think things have been done badly/wrong but the ones I'll be mentioning are only to illuminate problems with procedure and not personal to individuals. This review is an opportunity for all of us, and could be so beneficial for all of us; it could add so much to the city's standing and vitality.</p>
<p>2. Issue: Councillors and council staff not understanding how grassroots music operates and the wider implications because of this. For example, 90% off grassroots music in the city operates totally on goodwill with the people involved receiving no payment or running at a loss. I personally have lost at least £7k in the past five years but I continue because I have a passion for live music and want to help and be a stepping stone for the new blood of the city's musical talent. It is this goodwill keeps the venues open, the same venues that are needed for The Brighton Festival, The Great Escape and other festivals throughout the year. Without promoters like me (the majority) and bands playing for free and paying their own travel expenses then your high profile festivals just would not happen.</p>
<p>3. Issue: Inconsistency, a lack of transparency, elements of bias, an Us vs Them attitude (on both sides) and incorrect information presented to Councillors at review hearings etc.</p>
<p>4. As I said in my petition the importance of the city's nightlife, economically as well as culturally, seems to be taken for granted and only triggers into your council consciousness when something goes wrong or there are negatives involved. These negatives that Councillors and council staff come across only feed into that feeling that the city's nightlife is a problem to be tolerated, rather than something wonderful to be celebrated.</p>
<p>5. Issue: An uncoordinated approach to the city's nightlife by the council and relevant bodies.</p> <p>A holistic, proactive approach to all 'stakeholders' rather than reactive approach from authorities could tap into that goodwill out there, make life easier and less burdensome for council staff, build on the city's international reputation and create additional revenue streams for the council and businesses alike.</p>

I am attaching with the “London’s Grassroots Music Venues Rescue Plan” which was instigated by Boris Johnson with a huge input from the Music Venue Trust. Mark Davyd of the MVT can elaborate further with his submissions but the piece I’m writing for you by Monday will pull on themes in that report that are appropriate for Brighton & Hove.

Appendix 2

Mike Sansom Building Control Manager – written response to panel questions

1. Who enforces the Building Regulations? Is it just the Council?

In the mid 1980's the government brought in the option for people undertaking building work to use a Private Sector Building Regulations provider known as an "Approved Inspector" Up until the late 1990's the council retained over 90% of market share. Currently Brighton and Hove City Council Building Control team oversee 77% of all projects undertaken in the City. A private "Approved Inspector" can certificate Building projects but should the work fail to satisfy the Building Regulations and they cannot resolve the situation the private sector provider can revert the work to the Council. The Council are the only authority who have the power to take Building Regulations contraventions to court under the Building Act 1984. There is a power of injunction that can be instigated by anyone in relation to breaches of Building Regulations but the situation would have to be a significant concern to the health and safety of those affected.

2. If residential premises are established close to or adjoining or above a live music venue can the Building Regulations require sound insulation? If so who pays for that.

If a new residential building is provided adjacent to building that has a different use i.e. a public house with live music, then the new building should be constructed to ensure that a reasonable level of sound insulation exists from the non-residential use and the residential use. We would anticipate that the developer of the new building would include such sound reduction measures to satisfy the Building Regulations. However, the level of sound reduction may not prevent significant noise from a music venue as the requirements of the Building Regulations are limited.

3. If a music venue is established adjoining a residential unit do Building Regulation require sound insulation?

An existing building that is open to the public that becomes used for music events would not require Building Regulations consent as we would not deem this to be a change of use i.e. the building was open to the public and still is.

