

Subject:	Application for a New Premises Licence under the Licensing Act 2003		
Premises:	Saltdean News 27 - 29 Longridge Avenue Saltdean BN2 8LG		
Applicant:	Hirankumar Jashbhai Patel		
Date of Meeting:	24 August 2021		
Report of:	Executive Director of Housing, Neighbourhoods & Communities		
Contact Officer:	Name:	Becky Pratley	Tel: (01273) 292143
	Email:	becky.pratley@brighton-hove.gov.uk	
Ward(s) affected:	Rottingdean Coastal		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 To determine an application for a New Premises Licence under the Licensing Act 2003 for Saltdean News.

2. RECOMMENDATIONS:

- 2.1 That the Panel determine an application for a New Premises Licence under the Licensing Act 2003 for Saltdean News.

3. CONTEXT/BACKGROUND INFORMATION & CONSULTATION

- 3.1 The application is for a New Premises Licence under the Licensing Act 2003. The application proposes lock up Convenience Store occupying the ground floor in a parade of shops.
- 3.2 Part M (operating schedule) of the application is detailed at Appendix A and the plan of the premises is attached at Appendix B.

3.3 Summary table of proposed activities

	Proposed
Supply of Alcohol	Every Day 06:00 – 22:00
Hours premises are open to public	Every Day 06:00 – 22:00

3.4 The premises does not fall in the Cumulative Impact Area or the Special Stress Area.

Representations received

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

3.6 One representation was received. It was received from Sussex Police.

3.7 Representation received had concerns relating to Prevention of Crime and Disorder.

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

4. COMMENTARY ON THE LICENSING POLICY

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

1 Introduction

1.1 This Statement of Licensing Policy has been prepared in accordance with the provisions of the Licensing Act 2003 (the Act) and having regard to Guidance issued by the Home Office under Section 182 of the act. This policy takes effect from the 4th February 2021. The licensing authority is Brighton & Hove City Council. The purpose of this statement is to promote the licensing objectives and set out a general approach to making licensing decisions. The discretion of the licensing authority in relation to applications under the act is only engaged if 'relevant representations' are made by other persons or responsible authorities. This policy will inform the approach to be taken when deciding applications and imposing conditions when relevant representations are received. It is also intended as a guide for applicants as to what to include in their operating schedules, always recognising that if no representations are received, the application must be granted. The licensing authority must carry out its functions with a view to promoting the licensing objectives and this policy is framed around those objectives. Each application will be given individual consideration on its merit. The scope of this policy covers the following:

- 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.

1.2 The licensing objectives are:

- (a) the prevention of crime and disorder.
- (b) public safety.
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.

1.3 Scope

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

3.3 The Matrix Approach

The Licensing Authority will support:

- 3.3.1 Diversity of premises: ensures that there is a mix of the different types of licensed premises and attracts a more diverse range of customers from different age groups, different communities and with different attitudes to alcohol consumption. It gives potential for positively changing the ambience of the city or an area of it. This will have a positive effect in reducing people's fear of crime and in increasing the number of evening visitors to the city centre. The Community Safety Strategy recognises that too many single uses in a confined area and patrons turning out onto the streets at the same time may create opportunities for violent crime and public disorder and therefore supports mixed use venues encouraging a wider age balance.
- 3.3.2 A "matrix" approach to licensing decisions has been adopted and is set out below. It provides a framework of what the licensing authority would like to see within its area and gives an indication of the likelihood of success or otherwise to investor and businesses making applications.

Matrix approach for licensing decisions in a Statement of Licensing Policy (times relates to licensable activities).

	Cumulative Impact Area	Special Stress Area	Other Areas
Restaurant	Yes (midnight)	Yes (midnight)	Yes (midnight)
Café	Yes (10 pm)	Yes (10 pm)	Yes (10 pm)
Late Night Takeaways	No	Yes (midnight)	Yes (midnight)
Night Club	No	No	No
Pub	No	Yes (11pm)	Yes (midnight)
Non-alcohol lead (e.g. Theatre)	Yes (favourable)	Yes (favourable)	Yes (favourable)
Off-licence	No	No	Yes (Up to 11pm but if in densely residential area may be earlier – see note 7 below)
Members Club (club premises certificate)	Yes (<100 capacity) (11pm)	Yes (<100 capacity) (11pm)	Yes

Notes on matrix

Subject to the following notes, the policy, as represented in the matrix, will be strictly adhered to:

- 1) Each application will be considered on individual merit
- 2) Applications within the CIZ are subject to the special policy on cumulative impact at para 3.1, and those within the special stress area to the special stress policy considerations at para 3.2.
- 3) Departure from the matrix policy is expected only in exceptional circumstances
- 4) Exceptional circumstances will not include quality of management or size of venue except where explicitly stated in policy matrix.
- 5) Exceptional circumstances may include consultation with and meeting requirements of responsible authorities, an appropriate corporate social responsibility policy, community contribution to offset impact (such as financial contribution to infrastructure), community support, alcohol sale ancillary to business activity (demonstrable to responsible authorities and licensing authority, for instance by licence condition allowing authorised officers access to sales accounts).

- 6) The following licensing activities are encouraged and valued by the licensing authority: outdoor regulated entertainment, community-based street parties, members clubs, traditional pubs outside the city centre and non-alcohol led licensable activities, particularly within city centre.
- 7) Other Areas; consideration will be given to the nature of the area and location in relation to any application. In a residential area for example the concerns of local residents will be relevant when considering applications for off-licences, pubs or cafes, especially if there is evidence of anti-social behaviour, street drinking or underage drinking. Earlier closing times may be appropriate. Regard will be had to the Public Health Framework for assessing alcohol licensing on our website www.brighton-hove.gov.uk/licensingact.
- 8) In an area where there are already several existing off-licences or where the premises is situated within a parade with another off licence and where representations are received about negative cumulative impact on the licensing objectives of a further premises, the application may be refused on these grounds or restrictions placed on the terminal hour to reflect opening hours of other shops.
- 9) Outdoor events will be supported where arranged through the council's event planning process. Generally, regulated entertainment in the open-air including tents and marquees should have a maximum closure hour of 2300. Earlier hours may be imposed in sensitive open spaces or near residential areas. The licensing authority will have regard to Noise Council guidance.
- 10) Non-alcohol led category does not include "alcohol in shared workplaces". It is recommended that sale of alcohol in shared workspaces should have a terminal hour of no later than 10pm. For further advice and guidance on "alcohol in shared workplaces" please see paragraph 3.3.4-3.3.6.

3.5 Off licences

In recent years there has been a noticeable shift towards more people buying alcohol from shops and drinking at home prior to going into premises such as pubs and clubs. The council is concerned that alcohol loading from off-licence sales is a significant problem in the city and adversely affects the licensing objectives as it gives rise to problems of drunkenness, disorderly behaviour and a higher risk of alcohol sales to children. Representations from the police, local residents and the director of public health at licensing panel hearings have testified to these problems and Information published in the Public Health Framework for assessing alcohol licensing presents a ward-by-ward analysis of crime and disorder and health data which is relevant in this respect.

- 3.5.1 The special policy on cumulative impact and the special stress areas apply to off licences as explained in the matrix approach at 3.3. But in general, where applications are made for new premises or variations to existing licences, and where the police or others make representations against the grant of a further licence for off sales, the council will give specific consideration to restricting the number, type, and the hours of premises selling alcohol exclusively for consumption off the premises. Decisions will

be grounded in the Public Health Framework for assessing alcohol licensing. The council will want to be assured that the operating schedule of premises, and their overall management, training and levels of staffing, are appropriate to ensure that the licensing objectives are promoted in what may be challenging circumstances. Retail outlets and stores where the provision of fresh produce is the principal product sold maybe considered more favourably.

3.5.2 The Licensing Authority encourage off licences to join the Council led “Sensible on Strength” scheme to reduce the availability of cheap super strength beers and ciders. Off licences voluntarily sign up not to sell cheap super-strength beers and ciders over 6% ABV and operate good practice measures (see 3.5.3) for which they receive an accreditation as a responsible retailer.

3.5.3 Areas of best practice that may be included in an Operating Schedule include:

- the installation of a digital CCTV system by liaison with, and to a standard approved by Sussex Police
- Challenge 25 policy
- Refusals system
- Documented staff training including underage sales, drunkenness and proxy sales
- Voluntary restriction of high strength alcohol - operating schedules may be used to limit high ABV beers and ciders
- BCRP membership (or other accredited scheme)
- No sale of single cans
- Displays should not be located at the entrance/exit points or near checks out

3.5.4 The Licensing Authority and Sussex Police have specific concerns around the delivery of alcohol off the premises due to issues around the end location of delivery, age verification checks (Challenge 25), the increased possibility of the alcohol coming into the CIZ and SSA from other areas, as well as the personal safety of drivers when having to refuse a delivery at the end destination.

3.5.5 Alcohol delivery poses a unique set of challenges as it often transfers the final age verification to a person who has no responsibility in relation to the Premises Licence which authorised the sale of alcohol. A premises licence holder needs to be satisfied that their drivers or the delivery drivers of the third-party company they chose to use, have received regular and comprehensive training in age verification and identifying persons who have consumed too much alcohol.

3.5.6 Evidence has shown that customers have previously used landmarks/businesses not related to them as addresses for delivery so that alcohol could be consumed in open spaces/parks. The risk being that this may lead to increased crime and disorder including anti-social behaviour and criminal damage, as well as the possibility that underage persons can gain access to alcohol. Concerns have also been raised

about the delivery of alcohol to known street drinking hotspots. Therefore, a condition requiring all deliveries to be to a verifiable residential or business address and a face-to-face ID verification is vital in mitigating some of this risk.

- 3.5.7 While the Licensing Authority and Sussex Police recognise this is a growing area of business, new or variation applications to include the delivery of alcohol off the premises will be subject to increased scrutiny. Suggested conditions for the provision of an alcohol delivery service can be found at Appendix A of the SoLP. These are not exhaustive and each application will be considered on its own merits.

4 Prevention of Crime and Disorder

The following details and measures are intended to address the need for the prevention of crime and disorder which may be associated with licensed premises and certificated club premises. Conditions attached to licences and certificates will, as far as possible, reflect local crime reduction strategies.

- 4.1.1 The licensing authority acknowledges that training and good management play a key part in preventing alcohol and drug related crime. The authority expects that all licensees of on-licensed premises attend training programmes which will raise their awareness of the issues relating to drugs and violence in licensed premises, and that suitable training be extended to all bar staff and door supervisors so that drug dealers and users will be deterred from using licensed premises for illegal purposes and that incidents of violence in licensed premises will be reduced. Licensees are also encouraged to attend training programmes to help identify children at risk and issues of basic child protection. It is the duty of the designated premises supervisor (DPS) to train staff on induction concerning conditions on their premises licence.
- 4.1.2 It is expected that the DPS will spend a significant amount of time on the premises. When not on the premises it will be essential that the DPS is contactable, particularly should problems arise with the premises and that staff are authorised by the DPS.
- 4.1.3 The location of violent attacks, anti-social behaviour and hate crime or related incidents may be used to justify closing times.

4.2 Care, control and supervision of premises

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

violent crime and disorder. The council will support a responsible licensing scheme.

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

4.3.3 Following the grant of a licence, the management and supervision of the premises, in so far as it might impact on crime and disorder, will continue to be monitored. Particular attention will be paid to any licensed premises where there is evidence of criminal activity or any association with racist or homophobic crime. The licensing authority will keep itself well briefed on the nature, location and type of premises where alcohol related violence and disorder are occurring so it can take full account of the facts and avoid exacerbating problems as required by the Community Safety Strategy. Where licensed premises are found to cause nuisance or be associated with disorder or unreasonable disturbance, the review process may be invoked, and powers of revocation or the imposition of conditions may be considered. Conditions may include use of closed-circuit television, licensed door supervisors and earlier closing times. Such action to restrict the operation may be taken for trial periods to allow businesses an opportunity to remedy existing disorder, nuisance or disturbance.

4.3.6 Enforcement will be achieved by the enforcement policy appended (Appendix B of SoLP).

8 Integration of Strategies

8.1.1 The licensing authority shall secure the proper integration of this policy with local crime prevention, planning policy, transport, tourism and cultural strategies by:-

- Liaising and consulting with the Sussex Police, Community Safety Forum, Sustainability Commission representatives and following the guidance in community safety and crime and disorder strategy
- Liaising and consulting with Public and Alcohol Programme Board
- Liaising and consulting with the East Sussex Fire & Rescue Service
- Liaising and consulting with the Local Strategic Partnership, Safety Advisory Group (Emergency Planning) and Equalities and Social Justice Consultation Forum
- Liaising and consulting with the Planning authority
- Liaising and consulting with the Highways authority
- Liaising and consulting with local business and business associations. Having regard to any future documents issued relating to the Private Security Industry Act 2001, for example liaison or information sharing protocols

- Liaising and consulting with the Trading Standards Team, for example with regard to test purchasing codes of practice

8.1.2 In line with statutory requirements and the council's Inclusion Policy, the Licensing Authority shall have due regard to the need to eliminate unlawful discrimination, and to promote equality of opportunity and positive relations between persons of diverse backgrounds, for example communities of interest such as: lesbian, gay, bisexual and transgender people; disabled people; racial and ethnic groups; religious and faith groups.

8.1.3 This policy supports the aims of the tourism strategy, recognising the benefits for the tourism economy of creating a safer and more attractive city centre and improving competitiveness with other European cities. The Licensing Committee should receive any reports relevant to the needs of the local tourist economy and the cultural strategy for the area to ensure that it considers these matters.

8.1.4 The Licensing Committee should receive relevant information relating to the employment situation of the area and the need for new investment and employment where appropriate.

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

8.1.6 The licensing authority will have regard to the need to disperse people quickly and safely from the city centre to avoid concentrations which may produce disorder and disturbance.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

5.1 The licensing Act 2003 provides for fees to be payable to the licensing authority in respect of the discharge of their functions. The fee levels are set centrally at a level to allow licensing authorities to fully recover the costs of administration, inspection and enforcement of the regime.

Finance Officer Consulted Michael Bentley

Date: 04/08/21

Legal Implications:

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

- The prevention of crime and disorder
- Public safety

- The prevention of public nuisance
- The protection of children from harm

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

Lawyer Consulted: Rebecca Sidell

Date: 04/08/21

Equalities Implications:

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

Sustainability Implications:

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

SUPPORTING DOCUMENTATION

Appendices:

1. Appendix A – Part M (operating schedule) of the Application
2. Appendix B – Plan of Premises
3. Appendix C – Representation
4. Appendix D – Map of area

Documents in Members' Rooms

Brighton & Hove City Council, Licensing Act 2003: Statement of Licensing Policy 2021.

Home Office, Revised Guidance issued under section 182 of the Licensing Act 2003, April 2018.

Public Health Framework for assessing Alcohol Licensing. Annual Report – Ward. 5th edition. Public Health Intelligence. January 2019

Background Documents

Brighton & Hove City Council, Licensing Act 2003: Statement of Licensing Policy 2021.

Appendix A – Licensing Best Practice Measures

Best Practice Measures to be included for consideration, in particular in SSA:

Matters that would normally be expected in operating schedules:

- the adoption of a policy (e.g. Challenge 25) with acceptable proof of ID as per existing Statement of Licensing Policy
- all off sales to be made in sealed containers for consumption away from the premises
- a smoking policy which includes an assessment of noise and litter created by premises users
- the use of plastic or polycarbonate drinking vessels and containers, especially in outside areas or after specified hours
- a policy in relation to searching customers and for drugs, weapons, seized or lost and found property
- use of a refusals book for registering attempts to buy alcohol by under-age persons or refusals to those intoxicated
- the installation of a digital CCTV system by liaison with, and to a standard approved by, Sussex Police
- policies for dispersal of customers which may include signage regarding taxi services' telephone numbers and advice to respect neighbours and minimize noise

Items to which positive consideration would be given:

- membership of Business Crime Reduction Partnership, Pubwatch, Neighbourhood Watch or similar schemes
- use of 'NightSafe' radio system or similar accredited scheme
- regular training and reminders for staff in respect of licensing legislation, policies and procedures; records of which should be properly recorded and available for inspection
- records of regular checks of all parts of the premises in relation to drug use
- systems in place to ensure details of barred clients are exchanged with other operators

- giving an agreed minimum notice of special events (screening of major sports events, birthday parties, adult entertainment, etc.) to relevant authorities and use of appropriate additional measures at such events

Recommend best practice for both on and off premises

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

Shared Workspace

The Licensing Authority and the Police are aware that each set up and office block will be different and so support the approach of each case on its own merits. We would of course look at location, timings of licensable activity as well as the types of licensable activity being applied for upon receipt of any application. This would be taken into consideration as part of the decision making process and appropriate and proportional conditions agreed with the applicant if suitable. The conditions below are a selection of what have been offered/suggested/agreed in recent applications for shared office spaces.

- Access to the premises will be restricted to members only who are in possession of a key fob or similar access device and their invited guests. All guests attending functions at the premises where alcohol will be served must sign in and a record kept.
- ON sales only
- There will be no overt advertising of the licence facilities outside of the premises.

- No children under the age of 18 will be allowed on the premises unless accompanied by and under the control of an adult.
- There shall be no consumption of alcohol in the other non-licensed areas of the building and appropriate signage shall be displayed throughout the building to reinforce this.
- The sale of intoxicating liquor on the ground floor shall only be for consumption by persons seated at tables within the café bar area and on the [NAMED/NUMBERED] floor only by persons seated. There will be no vertical drinking in the licensed areas and substantial food shall be available at all times.
- From [X TIME] for pre-arranged events held inside the premises, for educational, networking or other similar events linked with the use of the premises to promote business vertical drinking will be permitted. A record of such of events will be kept on the premises and available for inspection by the Licensing Authority or the police.
- Whenever the premises is conducting the sale of alcohol for events for 100 persons or more, then either the designated premises supervisor, another personal licence holder or suitable Licensing act 2003 trained manager shall be present within the licensed premises.
- SIA registered door supervisors shall be employed when a requirement is identified by the Licence Holders risk assessment. The written risk assessment will be reviewed at least once every calendar year. The written risk assessment will take in to account information of guidance offered by the Police and also taking in to account busy periods such as Bank Holidays, seasonal variations and other city centre even premises for inspection of the Police and Authorised Officers of the Licensing Authority.

Alcohol Delivery Service

Conditions for consideration by any potential applicant may include (but are not exhaustive):

- Alcohol will only be delivered to residential and business addresses. The recipient will be required to show the requisite ID to ensure that

they are clearly a resident or employed at the named delivery address. Alcohol will not be delivered to customers at a park, in an open space, the beach, a bus stop etc.

- Delivery riders must be instructed to abort delivery where that sale is believed to be a “street sale” or to an open space. All such instances will be recorded in the refusals/incidents log.
- The alcohol delivery service will be ancillary to the provision of takeaway food. All alcohol deliveries must be accompanied by an order for food, the food contingent of the delivery being a minimum of [£X].
- All orders received with an alcohol element will be for delivery only, there will be no collection facilities available from the premises.
- All forms of advertising and promotional literature dealing with the delivery service (including internet sites and flyers/leaflets) will clearly and prominently state that alcohol will only be delivered together with an order for food, the food contingent of the total delivery being a minimum of [£X]. It will also advise of the premises ‘Challenge 25’ policy, which forms of approved ID will be accepted and that failure to show the required form of ID will result in non-delivery of the alcohol. This will be reiterated at the point of sale e.g. through an online ordering website/platform.
- All employees and agents of the premises or agents delivering orders will receive full advance training in selling alcohol, approved forms of ID and Challenge 25 policy as per condition [x] on the premises licence. All staff and agents will be fully trained and understand the company’s policy of non-delivery where approved ID is not available during final interaction with the customer.
- All such training undertaken by staff members shall be fully documented and recorded. All training records shall be made available to Sussex Police, officers of the local authority and officers from the Trading Standards team upon request.
- A record of sales and deliveries will be kept and made available for inspection by the Police, Licensing Authority or officers from the

Trading Standards team for 6 months from the date of delivery or refusal of alcohol.

- Where an order is taken for delivery by an employee of the premises to a customer, all customers will sign a delivery note which will contain:
 - a. a list of individual items delivered;
 - b. the delivery address;
 - c. the method of payment;
 - d. the name of the person ordering and receiving alcohol
 - e. the date and time of delivery;
 - f. if proof of age was asked for, confirmation of the type of proof of age document presented and accepted;
 - g. the name of the employee or representative of the premises who made the delivery.
- For deliveries where the alcohol is delivered personally by the Designated Premises Supervisor, or their employees or agents (including Deliveroo couriers) where the DPS has direct supervision over them and in the event that the person ordering and paying for the alcohol nominates another person (the third party) as the recipient of the alcohol (as a gift etc) and the alcohol is to be delivered directly to the third party and not the person ordering and paying for the alcohol, then the person ordering and paying for the alcohol will be required to state as part of their order that the third party/recipient is aged over 18.

Appendix B - Licensing Enforcement Policy

1.0 Statement of objectives

The council as licensing authority and responsible authority is committed to the council's priorities and will inform the enforcement actions taken. Amendments to priorities will be embedded automatically.

1.1

This service policy promotes efficient and effective approaches to regulatory inspection and enforcement that improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code.

1.2

In certain instances the service may conclude that a provision in the code is either not relevant or is outweighed by another provision. It will ensure that any decision to depart from the code will be properly reasoned, based on material evidence and documented.

1.3

The service pursues a positive and proactive approach towards ensuring compliance by:

- Supporting the better regulation agenda;
- Helping make prosperity and protection a reality for the city's community;
- Helping and encouraging regulated entities to understand and meet regulatory requirements more easily;
- Responding proportionately to regulatory breaches; and
- Protecting and improving public health and the environment.

1.4

This policy is based on the seven 'Hampton Principles' of:

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;

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

Advice and Guidance: Regulators should provide authoritative, accessible advice easily and cheaply;

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

Information requirements: Businesses should not have to give unnecessary information or give the same information twice;

Compliance and enforcement actions: The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions; and

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

1.6

The rights and freedoms given under the Human Rights Act, particularly Article 6 and 8, will be observed, as will the provisions of the Regulation of Investigatory Powers Act.

2.0 Scope of the policy

2.1

This policy supports and supplements specific guidance on enforcement action contained in the Statutory Code of Practice for Regulators, Brighton & Hove City Council's Corporate Enforcement Policy, Statutory Codes of Practice and relevant guidance documents and guidelines issued by government departments and co-ordinating bodies.

2.2

This policy relates to actions taken to educate and enforce legislation where non-compliances have been identified or have a realistic potential to occur.

2.3

The policy is limited to those enforcement activities lead by the Head of Environmental Health & Licensing.

3.0 Training

3.1

Officers undertaking enforcement duties will be suitably trained and qualified so as to ensure they are fully competent to undertake their enforcement activities.

4.0 Management systems

4.1

The service will maintain management systems to monitor the quality and nature of enforcement activities undertaken, so as to ensure, so far as is reasonably practicable, uniformity and consistency.

5.0 Enforcement options

5.1

The service recognises the importance of achieving and maintaining consistency in its approach to enforcement. Statutory Codes of Practice and guidance issued by government departments, other relevant enforcement agencies or professional bodies will therefore be considered and followed where appropriate.

5.2

Sanctions and penalties will be consistent, balanced, fairly implemented and relate to common standards that ensure individual's, public safety or the environment is adequately protected. The aim of sanctions and penalties are to:

- Change the behaviour of the offender;
- Eliminate any financial gain or benefit from non-compliance;

- Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- Proportionate to the nature of the offence and the harm caused; and
- Aim to deter future non-compliance.

5.3

Criteria to be taken into account when considering the most appropriate enforcement option include:

- the potential of the offence to cause harm;
- confidence in the offender;
- consequences of non compliance;
- likely effectiveness of the various enforcement options.

5.4

Having considered all the relevant options the choices for action are:

- **Informal Warning:** All advice issued will be given in writing and specify the nature of the breach or offence, and the actions required to remedy the issue. An informal warning may be included with the advice, and may accompany higher-level actions, such as Enforcement Notices or Voluntary Surrender:
- **Licence review:** Licence review power will be used where an application for review relates to one or more of the licensing objectives.
- **Taxi licence:** Taxi licence suspension or revocation will be used to protect public safety. Other sanctions such as DSA testing will be used to protect public safety and in accordance with the taxi licensing policy (Blue book).
- **Simple Caution:** The issue of a Simple Caution by an authorised officer may be undertaken as an alternative to prosecution where it is considered unnecessary to involve the courts, and the offender's response to the problem makes repeat offending unlikely, or the offender's age or health make it appropriate. Cautions may only be

issued where the offender makes a clear and reliable admission of guilt and understands the significance of acceptance.

- **Prosecution:** A prosecution is appropriate where there is a breach of a legal requirement, such that public safety, health, economic or physical well-being or the environment or environmental amenity is adversely affected. The Crown Prosecutor's Code of Evidential and Public Interests tests must be met in all cases. However, certain circumstances will normally justify prosecution to prevent the undermining of the service's enforcement responsibilities.
 - Failure to comply with an Enforcement Notice
 - Declining a Simple Caution
 - Continued, reckless, negligent or pre-meditated non-compliance.
 - Failure to pay a fixed penalty.
 - Non-cooperation, acts of obstruction or threats of physical harm or abuse.
- **Injunctions:** Injunctive action as a means of preventing an activity or course of action likely to result in significant risk to public or community safety or economic wellbeing of consumers and businesses.

5.5

If the department is considering taking enforcement action which it believes may be inconsistent with that adopted by other authorities, the matter will be referred to the appropriate local co-ordinating body.

6.0 Informal warning

6.1

Informal action may be taken when:

- the act or omission is not serious enough to warrant formal action, or
- from the individual's/enterprise's past history it can be reasonably expected that informal action will achieve compliance, or

- confidence in the individual/enterprise's management or ability to resolve the matter is high, or
- the consequences of non-compliance will not pose a significant risk to public health, public safety, animal welfare or the environment.

6.2

When an informal approach is used to secure compliance with regulations, written documentation issued will:

- contain all the information necessary to understand what is required and why;
- indicate the regulations contravened, measures which will enable compliance with legal requirements and that other means of achieving the same effect may be chosen;
- clearly differentiate between legal requirements and recommendations of good practice. Such a differentiation will also be made when verbal advice is given.

7.0 Simple cautions

7.1

A Simple Caution may be issued as an alternative to a prosecution. Cautions may be issued to:

- deal quickly and simply with less serious offences;
- divert less serious offences away from the courts;
- reduce the chances of repeat offences.

7.2

The following factors will be considered when deciding whether a caution is appropriate:-

- evidence of the suspect's guilt
- has a clear and reliable admission of the offence been made either verbally or in writing

- is it in the public interest to use a caution as the appropriate means of disposal when taking into account the public interest principles set out in the Code for Crown Prosecutors.
- the suspected offender must understand the significance of a simple caution and give an informed consent to being cautioned.

7.3

No pressure will be applied to a person to accept a Simple Caution.

7.4

The 'cautioning officer' will be the most appropriate officer from Service Director, Service Assistant Director, Head of Service Environmental Health Manager or Licensing Manager. The Cautioning Officer must not have taken an active part in investigating the case.

7.5

Should a person decline the offer of a simple caution a prosecution will be recommended.

8.0 Prosecution

8.1

The department recognises that the decision to prosecute is significant and could have far reaching consequences on the offender.

8.2

The decision to undertake a prosecution will be taken after proper consultation in accordance with the Scheme of Delegation for the council's functions. The decision to proceed with a prosecution will normally be taken following legal advice. The matters to be taken into account when deciding if the issue of proceedings is proportionate include:

- the seriousness and nature of the alleged offence;
- the role of the suspect in the commission of the offence;

- any explanation by the suspect or any agent or third party acting on their behalf;
- was the suspect in a position of trust, responsibility or authority in relation to the commission of the offence;
- is there evidence of premeditation or disregard of a legal requirement for financial reward;
- risk of harm to the public, an individual or the environment;
- relevant previous history of compliance;
- reliability of evidence and witnesses
- any mitigating or aggravating circumstances or the likelihood that the suspect will be able to establish a defence;
- suspect's willingness to prevent a recurrence of the offence;
- the need to influence future behaviour of the suspect;
- the likely penalty to be imposed; and
- a prosecution is in the public interest, there is realistic prospect of conviction and sufficient evidence to support proceedings.

8.3

All relevant evidence and information will be considered before deciding whether to instigate proceedings in order to enable a consistent, fair and objective decision to be made.

8.4

Where an act or omission is capable of constituting both a summary and either way offence, when deciding which offence to charge the following will be considered:

- the gravity of the offence;
- the adequacy or otherwise of the powers of the summary court to punish the offence;
- the record of the suspect;
- the suspect's previous response to advice or other enforcement action;
- the magnitude of the hazard;
- any circumstances causing particularly great public alarm;

- comments from the council's Solicitor's Office.

8.5

As a general rule an individual or business will be given a reasonable opportunity to comply with the law although in some circumstances prosecution may be undertaken without giving prior warning, e.g.

- the contravention is a particularly serious one;
- the integrity of the licensing framework is threatened.

9.0 Home Office and Government Advice: Problem premises on probation

9.1

The licensing authority supports the strategies of interventions and tough conditions to be assembled into packages released in 2008. The current version is appended (appendix A).

10.0 Appeals

If any person is unhappy with the action taken, or information or advice given they will be given the opportunity of discussing the matter with the relevant team manager, Head of Service or Assistant Director.

Any such appeal does not preclude any aggrieved person from making a formal complaint about the service or any officers. Any such complaint will be dealt with in accordance with corporate procedures and guidance.

Complaints that are not dealt with by the council's complaints procedure are listed in corporate policy and include:

- Complaints where the complainant or another person has commenced or intends to commence legal proceedings against the council.
- Complaints where the council has commenced or intends to commence legal proceedings against the complainant or another person relating to the matter of complaint

11.0 Shared enforcement roles

Lead agency status between Sussex Police, East Sussex Fire and Rescue Service and the council's trading standards, environmental health and licensing officers are determined between the agencies at county level. The current position is appended (appendix H).

