

Licensing Act 2003 – Review of Statement of Licensing Policy

Report by the Executive Head of Housing, Health & Community Safety

1.0 Summary

- 1.1 In accordance with the statutory requirements of the Licensing Act 2003 (“the Act”) the Council’s Licensing & Control Committee B has resolved to review its Statement of Licensing Policy.
- 1.2 Members are requested to consider the attached draft policy incorporating changes to the ‘Special Saturation Policy’ prior to its issue for further authority, stake holder and public consultation.

2.0 Background

- 2.1 In December 2010, on the recommendation of this committee, the full Council approved the current Statement of Licensing Policy (the Policy) following an extensive consultation process with the public, statutory consultees and the voluntary agencies. The policy was in accordance with both the 2003 Act and the statutory guidance issued under section 182 of the 2003 Act that was current at the time.
- 2.2. In July 2012 this committee approved, in the interim, the adoption of a re-drafted policy to incorporate changes made to the 2003 Act and its guidance by the Police Reform & Social Responsibility Act 2011. It contained the minimum of amendments to accommodate the changes made to the 2003 Act and no changes to the intent or direction of the policy were included. Because it was a simple re-draft rather than a full review the 2003 Act allowed it to be adopted by the Licensing & Control Committee B rather than full council.
- 2.3. At that hearing the Committee requested a full review of the Policy be conducted.
- 2.4. The current Statement of Policy includes a ‘Special Saturation Policy’. This has been in place since February 2005. It applies to Central Ward and effectively creates a presumption of refusal for new premises licence applications, or applications for substantial variations, for vertical drinking establishments (pubs & nightclubs) if relevant representation is received.

- 2.5 The council's statement of policy, along with the statutory guidance issued under the 2003 Act, has provided the framework for members decision making on applications for premises licences since the first appointed day in February 2005.
- 2.6 At the July meeting members of this Committee requested the Policy be reviewed and identified a number of issues at the meeting, and subsequently, that they wanted considered. These included:
- The 'Special Saturation Policy'.
 - Alcohol & Health
 - Off Licence Sales
 - Late Night Refreshment
- 2.7 As a result a new draft policy was compiled to address the issues highlighted above.
- 2.8 Under the provisions of the 2003 Act, before amendments can be made to a policy, the Council must embark on wide ranging consultation. The revised draft policy, together with a comprehensive list of consultees was approved for a 6 week consultation exercise by members at a meeting of this committee on 2 October 2012.
- 2.9 As a result of the consultation the draft policy was brought back before members together with the representations received on 6 December 2012. Members approved a revised new draft with the exception of the amended 'special saturation policy'. Members requested that this was further revised.
- 2.10 Members agreed that a meeting between the chair of the Licensing & Control Committee and Sussex Police should be held to assist with the drafting of a new revised 'Special Saturation Policy'. This was held on 28 February and a new version has been drafted. (**Appendix A**)
- 2.11 Though the majority of the draft policy has now been approved by members the new changes to the 'Special Saturation Policy', as a fundamental part of the Statement of Licensing Policy, will have to be re-consulted on.
- 2.12 Under the provisions of the 2003 Act the Council must review its Statement of Licensing Policy at least every five years.
- 3.0 Consultation**
- 3.1 From 9 October to 20 November 2012, a draft policy was the subject of an extensive consultation exercise which included the public, residents groups, voluntary groups, trade groups, non licensed trade business representatives, and the responsible authorities.
- 3.2 Only five separate responses were received but they are generally supportive of the draft policy though four out of the five expressed their support for the retention of a 'Special Saturation Policy'.

- 3.3 Sussex Police produced a document entitled 'Public Place Violent Crime in Central Ward, Worthing – October 2011 to September 2012' to support their representation **(Appendix B)**
- 3.4 It is proposed that all those initially consulted, between 9 October to 20 November, be re-consulted and the new draft policy is placed on the council website for the public to view and make representation.
- 3.5 As the draft policy includes amendments limited to the 'Special Saturation Policy' it is suggested that this consultation period be limited to six weeks.
- 3.6 At the close of consultation all relevant representations will be brought before members for their consideration before any final draft Policy is presented to full the council for adoption.
- 3.7

4.0 Proposals

- 4.1 Members approved a new draft policy with the exception of the 'Special Saturation Policy' and are now being invited to consider the enclosed updated saturation policy as part of that draft policy prior to it being issued for further consultation and either:
- a) Approve it in the form submitted.
 - b) Approve it in the form submitted but with minor amendments.
 - c) Reject the draft and detail the full changes required.

5.0 Legal

- 5.1 The 2003 Act (Section 5) requires that a licensing authority prepare and publish a statement of its licensing policy at least every five years. Such a policy must be published before the authority carries out any function in respect of individual applications and notices made under the terms of the 2003 Act. During the five-year period, the policy must be kept under review and the licensing authority may make any revisions to it as it considers appropriate, for instance in the light of feedback from the local community on whether the licensing objectives are being met.
- 5.2 In determining all licensing matters, the principles of the Human Rights Act 1998 must be taken into consideration.
- 5.3 Members must ensure its policies allow all applications to be considered on their own merits, and in accordance with the principles of natural justice as well as the provisions of the 2003 Act. All relevant factors must be taken into account, and all irrelevant factors must be disregarded.
- 5.4 All matters before Committee must be considered against the backdrop of the Equality Act 2010 and also in accordance with the Council's stated policy on Equalities.

5.5 In accordance with Section 17 of the Crime and Disorder Act 1998 the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent, crime and disorder in its areas. The possible crime and disorder implications are clearly relevant factors in the consideration of all applications and this is re-emphasised by the 2003 Act itself.

6.0 Financial implications

6.1 There are no financial implications for the Council.

7.0 RECOMMENDATION

7.1 Members are invited to consider and determine

- i) The Draft Statement of Licensing Policy for consultation.**
- ii) The Consultation list.**
- iii) A six week consultation period.**

7.1 The Committee is requested to give details of any changes that are required to any of the above.

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Background Papers:

- Licensing Act 2003
- Guidance issued under section 182 of the Licensing Act 2003 (October 2012)
<http://www.homeoffice.gov.uk/publications/alcohol-drugs/alcohol/guidance-section-182>
- Worthing Borough Council's current Statement of Licensing Policy (July 2012)
<http://www.adur-worthing.gov.uk/media/media,98561,en.pdf>

Appendices:

- Appendix A - The Draft Saturation Policy
- Appendix B – Public Place Violent Crime in Central Ward, Worthing – October 2011 to September 2012

Commerce Way, Lancing

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SEJ

Appendix A

Draft Special Saturation Policy

- 6.7 Cumulative Impact is defined as the potential impact upon the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area.
- 6.8 The licensing authority, following representation backed by evidence and after careful consideration, has determined that the concentration of different types of licensed premises in a number of areas of the borough is causing a series of different problems regarding crime and disorder and public nuisance, and that therefore an approach to 'Cumulative Impact' is necessary as part of its statement of licensing policy.
- 6.9 Worthing Borough Council has had in place since 2005 a Special Saturation Policy regarding 'vertical drinking establishments'. The policy placed a presumption of refusal on applications for
- New premises licenses, or
 - Substantial variations to existing licences
- for any vertical drinking establishments in Central Ward.
- 6.10 In 2013, following representation and consultation, an amended central ward policy and a second policy regarding 'off licences' have been introduced. These special policies will only be overridden in exceptional circumstances.
- 6.11 The council recognises different premises with different styles and characteristics can have a very different impact on the town. For example, while a large nightclub or high capacity public house might add to problems of cumulative impact in the town centre, a small restaurant, traditional pub or theatre may have little impact or even a beneficial impact. Accordingly, the operation of such a premise could be considered exceptional circumstances. In relation to this, the licensing authority considers that it is more proportionate to look favourably upon a pub wanting to open until 23.00hrs during the week and 00.00hrs (midnight) at weekends or a restaurant until 00.00hrs (midnight) as it has emerged from all the evidence and consultation responses that these types of premises operating within these hours are unlikely to add to cumulative impact in the area.
- 6.12 The fact that a premise will be/is exceptionally well managed with a well qualified applicant, or that there are no residential premises nearby, will not be considered exceptional.
- 6.13 The effect of these special policies is that applications for the relevant premises licences or club premises certificates within certain areas, or variations which are likely to add to the existing Cumulative Impact, will be refused, following relevant representations. This presumption can be rebutted by the applicant if they can show that their application will have no negative Cumulative Impact.

Policy A: Vertical Drinking Establishments

- 6.14 Due to concerns regarding the cumulative impact of licensed premises on crime and disorder in Worthing town centre, expressed by Sussex Police and based on statistical evidence, the Council put in place a Special Saturation Policy covering the borough's Central Ward between 2005 and 2013. The policy placed a presumption of refusal of applications for
- New premises licenses, or
 - Substantial variations to existing licences,
- for any vertical drinking establishments whenever the Licensing Authority received relevant representations. Subject to relevant representations being properly made relating to cumulative impact on the Licensing Objectives.
- 6.15 The council considers that this policy has been effective in reducing the number of licensed vertical drinking premises in the ward and their cumulative impact on crime and disorder.
- 6.16 The council recognises that the general improvement in the quality of management of the town centre public houses and night clubs and the efforts of Sussex Police, the other Responsible Authorities and the partners working in the night time economy, including Worthing Pubwatch, has reduced the problems experienced in the town centre sufficiently that the policy can be relaxed slightly.
- 6.17 Some concerns regarding the cumulative impact of the high concentration of licensed vertical drinking premises on crime and disorder in Worthing town centre still remain. However, those expressed by Sussex Police & others and based on statistical evidence show the main concerns are regarding problems and incidents taking place late into the night.
- 6.18 The council considers the representation and evidence sufficient for an amended Special Saturation Policy (Policy A) to be required. This still covers the borough's Central Ward and the policy places a presumption of refusal on applications for
- New premises licenses, or
 - Substantial variations to existing licences
- for any vertical drinking establishments which seek to operate outside 'core hours' whenever the Licensing Authority receives relevant representations that are properly made relating to cumulative impact on the Licensing Objectives.
- 6.19 The council considers the core hours for vertical drinking establishments to be 08.00hrs to 23.00hrs Sunday to Thursday and 08.00hrs to 00.00hrs midnight Friday & Saturday.
- 6.20 The need for such a policy will be reviewed on an on-going basis.

Policy B: Premises selling alcohol for consumption off the premises

6.21 The council will consider all applications on their own merit and will not consider 'need or demand' but when an area is experiencing problems and this is linked to the number of premises in the area already selling alcohol, for consumption off the premises, the council will carefully consider the cumulative impact on the licensing objectives of any new application if relevant representation is received.

6.22 Due to concerns regarding the cumulative impact of premises licensed to sell alcohol for consumption off the premises on crime and disorder in areas of Worthing, expressed by Sussex Police and based on statistical evidence, the Council considers a Special Saturation Policy (Policy B) is required to cover the borough's Central, Heene, Selden, Marine and Broadwater wards. The policy places a presumption of refusal on applications for

- New premises licenses, or
- Substantial variations to existing licences

for any 'off licence' establishments whenever the Licensing Authority receives relevant representations. Subject to relevant representations being properly made relating to cumulative impact on the Licensing Objectives.

6.23 This special policy applies to all new premises licences authorising the sale of alcohol for consumption off the premises for stores such as off-licences, convenience stores & supermarkets. The saturation of such licensed premises can contribute to problems of street drinking, proxy purchasing, dispersal issues, pre-loading, post-loading, excessive drinking and related disorder.

6.24 The presumption of refusal referred to in both policy A & B does not relieve responsible authorities or members of the public of the need to make a relevant representation. If there are no representations, the licensing authority must grant the application in terms consistent with the operating schedule submitted.

6.25 These special policies are not absolute. Upon receipt of a relevant representation, the licensing authority will always consider the circumstances of each case and whether there are exceptional circumstances to justify departing from its special policies in the light of the individual circumstances of the case. If an application is unlikely to add to the cumulative impact of the area, it may be granted. The impact can be expected to be different for premises with different styles and characteristics. For example, while a large nightclub or high capacity public house might add to problems of cumulative impact, a small restaurant, pub or theatre may be considered exceptional circumstances. In relation to this, the licensing authority considers that it is more proportionate to look favourably upon a pub wanting to open between 11.00hrs and 23.00hrs, a convenience store seeking to sell alcohol 10.00hrs to 22.00hrs or a restaurant seeking to open between 10.00hrs and 00.00hrs (midnight) as it has emerged from all the evidence and consultation responses that these types of premises operating within these hours are unlikely to add significantly to cumulative impact in the area. The fact that a premises will be/is exceptionally well managed with a well qualified applicant, or that there are no residential premises nearby, will not be considered exceptional.

6.26 The Council will try to encourage a diversity of premises in an area. Encouraging a mix of the different types of licensed premises hoping to attract a more diverse range of customers from different age groups, different communities and with different attitudes to

alcohol consumption. Too many single uses in a confined area create problems and opportunities for violent crime & public disorder and public nuisance. The council will support mixed use venues encouraging a wider age balance.

6.27 To encourage diversity and tackle the problems of cumulative impact a “matrix” approach to licensing decisions has been adopted and is set out below.

	Zone A Central ward	Zone B Heene, Selden, Marine & Broadwater wards	Mixed Commercial & Residential areas (streets containing shopping parades)	Residential areas (streets containing mainly residential properties)
Restaurant	Yes - Midnight	Yes	Yes	Yes
Late Night Takeaway	Yes – 02.00hrs	Yes – 02.00hrs	Yes - Midnight	Yes - Midnight
Nightclub	No	Yes – 03.00hrs	Yes – 03.00hrs	No
Public House	Yes – 23.00hrs, midnight Fri & Sat	Yes	Yes	Yes – 23.00hrs, midnight Fri & Sat
High Volume Vertical Drinking Establishment (Super pub over 300 capacity)	No	Yes	Yes	No
Non Alcohol Lead (Sports centre, Theatre, Cinema etc.)	Yes	Yes	Yes	Yes
Off- Licence	No	No	Yes	Yes
Members Club	Yes – 23.00hrs	Yes	Yes	Yes

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

- 1) Each application would be considered on individual merit
- 2) Departure from policy is expected only in exceptional circumstances
- 3) Exceptional circumstances will not include quality of management or size of venue except where explicitly stated in policy matrix
- 4) Exceptional circumstances may include: close consultation with Sussex Police and the Licensing Authority, meeting requirements of responsible authorities, an appropriate corporate social responsibility policy, community contribution to off set impact (such as financial contribution to infrastructure), community support, alcohol sale ancillary business activity (demonstrable to responsible authorities and licensing authority, for instance by licence condition allowing authorised officers access to sales accounts), BCRP membership
- 5) The following licensing activities are encouraged and valued by the licensing authority: outdoor regulated entertainment, community based street parties, members clubs, traditional pubs outside the town centre and non-alcohol led licensable activities, particularly within town centre

- 6) Shatterproof drinking receptacles will normally be required by licence condition in alcohol led establishments in the town centre
- 7) Outdoor events will be supported where arranged through the council's event planning process
- 8) Favourable consideration will be given to residential need
- 9) Favourable consideration will be given to local businesses properly engaged with the local licensing authority and responsible authorities

6.28 Café Bars - the licensing authority may be prepared to look favourably upon an application for the grant of a licence, subject to the following conditions that will prevent the premises becoming a public house.

- The sale of intoxicating liquor and other beverages shall be waiter/waitress service for consumption by persons seated at tables.
- Substantial food shall be available at all times. Licensees should be aware that breach of such conditions is likely to lead to appropriate enforcement action.

6.29 The above policies will not be used as a ground for revoking a licence when representations are received about problems with an existing licensed premise. Nor will it be used to justify rejecting applications to vary an existing licence unless those modifications are directly relevant to the policy (as would be the case with an application to vary a licence with a view to increasing significantly the capacity limits of the premises or the hours of trade).

Appendix B

Review of Public Place Violent Crime in Central Ward, Worthing - October 2011 to September 2012

The key points arising from the analysis are as follows:

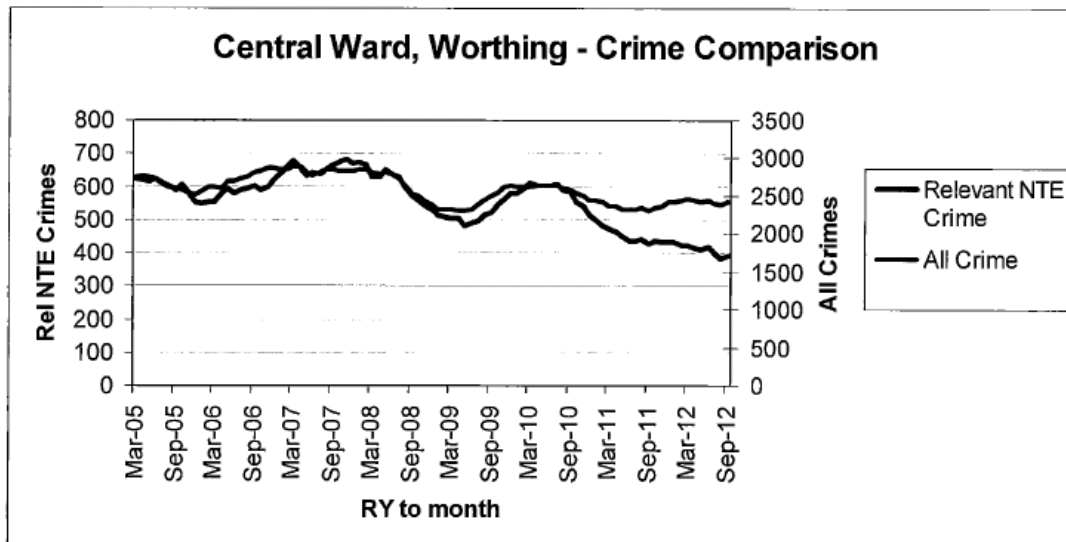
- Overall crime in Central Ward has risen by 120 crimes from the same period in 2010/11, from 2292 crimes to 2412 crimes.
- The key crime increases have been in Theft & Handling (+88), Violent Crime (+66), Fraud & Forgery (+45) and Drug Offences (+13).
- Public Place Violent Crime is responsible for two-thirds of the Violent Crime increase.

Breakdown of Public Place Violent Crime Increases

- Public Place Violent Crime has increased from 356 offences to 400 offences, an increase of 44 crimes.
- In terms of crime subgroup, the increase has been in Violence Against The Person (+48), whilst Robbery (-2) and Sexual Offences (-2) have both decreased.
- Breaking this down further, the Violence Against The Person increases are in Assault with Injury (+35), Assault On A Constable (+10), Assault without Injury (+8) and Harassment (+5). Possession of article with blade or point has also increased, doubling from 8 crimes to 16 crimes.
- The 44 crime increase in PPVC is not occurring in the Night Time Economy (8pm-4am), where crime levels have remained static. The increase is occurring between midday and 8pm, an increase of 53 crimes.

Relevant Night Time Economy Crime Since 2005

The following graph shows a comparison of all crime in Central Ward against crimes in the Night Time Economy that are relevant to the possible impact of the NTE - affray, assault (Common & ABH), breach of ASB, harassment, criminal damage, sexual offences, GBH, public nuisance, threats, violent disorder and wounding. Night Time Economy is defined as crime between 8pm and 4am:



- This shows that, in comparison to overall crime in the area, relevant NTE crime has decreased since September 2010.