

BODY: Licensing Act Committee

DATE: 6th October 2014

SUBJECT: Sensible on Strength Scheme

REPORT OF: Jay Virgo, Senior Specialist Advisor

Ward(s): All

Purpose: To introduce a voluntary scheme that aims to limit the availability of super-strength beer, lager and cider in the Town centre and to encourage retailers who sell alcohol 'off the premises' to operate good practice measures that will promote the four licensing objectives.

Contact: Jay Virgo, Senior Specialist Advisor, Telephone 01323 415933 or internally on extension 5933
E-mail address jay.virgo@eastbourne.gov.uk

Recommendations:

- i) That the Licensing Committee notes the contents of this report.
- ii) That the Licensing Committee approves the launch of the Sensible on Strength scheme.

1.0 Summary and Policy Context

1.1 This report sets out to inform the Licensing Committee about the Sensible on Strength Scheme.

2.0 Background Information

2.1 Subject to Committee agreement, officers from Eastbourne Borough Council will work in partnership with East Sussex County Council's Trading Standards and Sussex Police to develop a non-mandatory customer driven compliance and accredited trader scheme.

2.2 The purpose of the scheme is to find ways of limiting the availability of super-strength beer, lager and cider in Eastbourne so as to promote the licensing objectives and to encourage retailers who sell alcohol 'off the premises' to operate good practice measures that will promote the four licensing objectives. The four licensing objectives are paramount under the Licensing Act 2003 and are; the prevention of crime & disorder, the prevention of public nuisance, public safety and the protection of children from harm.

- 2.3 The evidence indicates that the measures outlined in the report which aims to alter the availability of super-strength beer, lager and cider will be instrumental in achieving the ultimate objective of reducing alcohol related harm and anti-social behaviour. It is anticipated that those more vulnerable drinkers will consume weaker alcohol products and evidence suggests that if this can be achieved, the level of deterioration in health is dramatically slowed.

3.0 Community

- 3.1 The aim is to engage with the community to reduce anti-social behavior and improve people's health whilst working with businesses to promote and support responsible retailing.
- 3.2 Officers want to encourage licensed businesses to voluntarily cease off sales of low cost super-strength beer, lager and cider above 6.5% Alcohol by Volume (ABV).

Alcohol by volume is a standard measure of how much alcohol is in a beverage expressed as the percentage of total volume.

4.0 Alcohol and Health

- 4.1 According to data from the Office of National Statistics, the number of alcohol related deaths increased by nearly a fifth between 1999 and 2004. Deaths in England and Wales rose from 5,525 in 2000 to 6,544 in 2004. Alcohol Concern believes that these figures are an underestimate of the true figure. They argue that other research and statistics covering illnesses and health problems related to excessive alcohol consumption including some types of cancers, strokes, heart disease and dementia as well as accidents, suicides and assaults, provides a more accurate figure of over 30,000 deaths a year.
- 4.2 The Government's Alcohol Harm Reduction Strategy states that there are up to 22,000 premature deaths per annum and over 30,000 hospital admissions linked to alcohol dependence. It is estimated that 70% of admissions to Accident and Emergency departments at the weekend are linked to alcohol-related incidents.
- 4.3 The East Sussex public Health Directorate published the report "Alcohol Related Health Harm" in February 2013. **Appendix 1** includes an overview of alcohol indicators for East Sussex and data that is specific to Eastbourne. The Committee will note the data in the report relating to the alcohol related hospital admissions, which is above the East Sussex average. The data set also includes alcohol related chronic conditions by age and relative contribution of age to mental and behavioural disorders due to the use of alcohol.

4.4 As an example, a single 500ml can of 9% super-strength lager contains four and a half units of alcohol, which exceeds the Government's daily recommended safe alcohol limit of between two to three units for women and three to four units for men. This clearly breaches the drinks industry's corporate social responsibility guidelines.

5.0 Anti-Social Drinking

5.1 Drinking in the streets can intimidate members of the public, cause disorder and nuisance, and generally degrade a public space.

5.2 The Prime Minister's Strategy Unit launched the Alcohol Harm Reduction Strategy for England in 2004. It stated that alcohol misuse is linked to disorder and contributes to driving people's fear of crime; 61% of the population think that alcohol-related violence on the streets is increasing, whilst 43% of women and 38% of men see drinking on the street as a problem.

5.3 The East Sussex Safer Communities Partnership commissioned a report into the "Reported Incidents of Street Drinkers in Eastbourne". This is included as **Appendix 2**.

5.4 In summary the data from **Appendix 2** suggests that street drinking has risen in Eastbourne whilst overall, anti-social behavior has dropped dramatically. This issue is almost exclusively confined to the town centre.

5.5 Figure 3 included within **Appendix 2** shows a map of reported street drinking in Eastbourne for the period November 2011 to October 2012. There are 5 distinct areas of street drinking activity in the town centre that have been identified.

6.0 Scheme Message

6.1 The scheme has a very simple message: to educate and encourage businesses to operate a responsible retailing scheme. The message is that low cost super-strength beer, lager and cider is synonymous with irresponsible drinking and contributes to anti-social behaviour in the town.

6.2 Evidence suggests that where businesses have removed low cost super strength beer, lager and cider they have seen a reduction in crime & disorder experienced in and around the premises in question.

6.3 Ipswich Borough Council, in partnership with key stakeholders initiated a similar campaign called "Reducing the Strength". This commenced in September 2012. Please see **Appendix 3** for an update on the successes of the campaign that were experienced six months after its launch.

- 6.4 More locally Brighton & Hove City Council and Hastings Borough Council have commenced similar schemes.
- 6.5 Importantly, the schemes message is not anti-alcohol and recognises the long established beer and cider drinking culture in the UK. The scheme emphasises that when consumed in excess low cost super-strength beer, lager and cider causes damage to an individual's health and can be instrumental in anti-social behaviour.
- 6.6 Officers maintain that educating, supporting and encouraging businesses is a step in the right direction of improving the negative trends associated with alcohol in Eastbourne.
- 6.7 If committee is minded to support the launch of the 'Sensible on Strength' scheme in Eastbourne then officers will work with partnership agencies, stakeholders and businesses to drive the scheme forward.

7.0 Community & Stakeholder Engagement

- 7.1 To date, the following stakeholders have given their support for the launch of the Sensible on Strength scheme: ESCC Alcohol Steering Group, the Community Safety Partnership Strategy Group, Sussex Police, ESCC Trading Standards, Broadway Homelessness and Support and Sussex Partnership Trust.
- 7.2 The ESCC Alcohol Steering group has agreed that one of its objectives should be to develop partnership schemes with retailers and licensees to promote responsible sales.
- 7.3 A number of retailers have expressed an interest in the scheme and have suggested that it would enable them to promote the merits of responsible retailing thereby presenting a positive image of their business to customers and the broader community.
- 7.4 The Licensing Authority will continue to work in partnership with businesses, interested parties, local residents and stakeholders to effectively maintain the objectives of the Licensing Act 2003.

8.0 Links to The Strategic Vision

- 8.1 The Corporate Plan 2010-2015 (refreshed in 2014) sets out the Council's priority themes and aims for the authority and can be found via:

<http://www.eastbourne.gov.uk/EasysiteWeb/getresource.axd?AssetID=210648&type=full&servicetype=Inline&filename=/corporateplanrefresh1415pdf.pdf>

- 8.2 The Statement of Licensing Policy is instrumental in delivering the aims of the Corporate plan and can be found via:

<http://www.eastbourne.gov.uk/about-the-council/council-policies-plans-and-strategies/licensing-policy/licensing-policy-and-cumulative-impact-policy/>

- 8.3 The Minister for Crime Prevention wrote to all Licensing Authorities on 6th August 2014, welcoming local authorities' desire to take initiatives to try to address the harms associated with high ABV products. He also however reminded Licensing Authorities of the need to take into account the competition law risks of such schemes. A copy of this correspondence is included in **Appendix 4**.

9.0 Financial & Resource Implications

- 9.1 EBC Officer time will be absorbed within the Licensing service budget, which is self-financing. Associated fees are set by central government. A budget for marketing and production of stickers for participating business to display is envisaged to cost around £500. A bid to cover this cost will be made to the Joint Action Group (JAG).

10.0 Legal Considerations

- 10.1 The Office of Fair trade published "Local Initiatives and Competition Law" on the 4th February 2014. This is included in **Appendix 5** and canvasses some of the issues and risks where local authorities propose non-mandatory measures which seek the buy-in of independent undertakings.
- 10.2 In considering whether to support the initiation of the "Sensible on Strength Scheme", Committee will need to be mindful of the risks of an infringement of competition law. Competition law prohibits agreements between undertakings which may affect trade within the UK and have as their object or effect the prevention, restriction or distortion of competition within the UK. The consequences of breaching competition law are that the Competition and Markets Authority may initiate proceedings against the authority, cause it to cease the prohibited activity and impose a fine or other penalty. There may also be liability to third parties by way of damages or injunctive relief for losses suffered as a result of the infringement.
- 10.3 Members will be mindful of the local authority's primary objective, which is to disseminate to business a public policy message about the potential impact of a retailer's sales activity. This scheme – in common with many others across the UK – invites each business to make a unilateral commitment to address this and to the scheme as it sees fit. The risk of challenge to the proposed scheme is minimized by its non-mandatory character as well as the fact that the rationale for its existence is based on

local needs. It aims to encourage the voluntary collaboration of participants and is to be distinguished from agreements between competitor undertakings even where those are encouraged by the local authority.

- 10.4 The Competition and Markets Authority (CMA), which has superseded the Office of Fair Trading (OFT), has been reported as stating in April 2014 that it considers the voluntary nature of those schemes which have already been set up in the context of local circumstances.
- 10.5 On 4th February 2014, the OFT (now CMA) attended the Local Government Association (LGA) Annual Licensing Conference and delivered a workshop on Local Initiatives and Competition Law. The OFT gave an introduction to competition law, explained where further guidance and compliance resources could be found and discussed the competition law risks around local initiatives that involve co-operation or collaboration between industry participants. A particular focus of this workshop was local authority initiatives related to the sale of alcohol. The CMA also attended the Institute of Licensing conference on 17th June 2014 to deliver a similar workshop.
- 10.6 The proposed arrangements for the scheme take into account the best practice guidance in **Appendix 5** and the law to adopt an approach which ensures that the risk of an infringement of competition law by the local authority and businesses remains low.
- 10.7 Trade bodies raised their concerns in relation to infringement of competition law in correspondence sent to EBC on the 16th May 2014. This is included in **Appendix 6**.
- 10.8 The Councils legal advisor has been fully consulted in relation to this proposal.

11.0 Human Rights

- 11.1 The provisions of the Human Rights Act, 1998, must be borne in mind by the Committee when taking licensing decisions under the Licensing Act, 2003. Particular regard should be had to Article 1 of the First Protocol, which relates to the protection of property and the peaceful enjoyment of possessions and property.
- 11.2 Article 8 relates to the right to respect for private and family life, home and correspondence - should also be borne in mind. While the Human Rights Act makes it unlawful for a local authority to act or to fail to act in a way that is incompatible with a Convention right, Article 1 of the First Protocol and Article 8 are both qualified rights which means that interference - to a justifiable extent - may be permitted as long as what is done:

- Has a basis in law;
- Is intended to pursue a legitimate purpose
- Is necessary and proportionate; and
- Is not discriminatory;

12.0 Equality and Fairness Analysis

- 12.1 Low cost, high ABV beer, lager and cider are associated with consumption by adults who have lower incomes and who risk drinking at harmful levels.
- 12.2 Transition by individuals to lower ABV products is anticipated to be instrumental in reducing the harm of alcohol in the community.
- 12.3 An Equality and Fairness Analysis and scoping report will be carried out.

13.0 Recommendation

- 13.1 Licensing Committee approves and fully supports the launch of the Sensible on Strength scheme