

BRIGHTON & HOVE CITY COUNCIL
LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

10.00am 22 SEPTEMBER 2020

VIRTUAL MEETING - SKYPE

MINUTES

Present: Councillor ; Deane, O'Quinn and Simson

Officers: Becky Pratley (Technical Officer), Emma Grant (Licensing Authority Officer), Rebecca Siddell (Legal Advisor), Gregory Weaver (Democratic Services Officer)

PART ONE

19 TO APPOINT A CHAIR FOR THE MEETING

19.1 Councillor Lizzie Deane was appointed Chair for the meeting.

20 PROCEDURAL BUSINESS

20a Declaration of Substitutes

20.1 There were none.

20b Declarations of Interest

20.2 There were none.

20c Exclusion of the Press and Public

20.3 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Licensing Panel considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I of the Act).

20.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of Item 21 onwards.

21 32 BLATCHINGTON ROAD LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

- 21.1 The Panel considered a report of the Executive Director of Neighbourhoods, Communities & Housing in relation to an application for a New Premises Licence under the Licensing Act for No. 32 Blatchington Road, Hove, BN3 3YN. Present at the hearing were: Becky Pratley (Technical Officer), Emma Grant (Licensing Authority Officer), Mark Thorogood (Sussex Police), Vincent Lamb (Sussex Police), Steven Wright (Licensing Consultant Representing Mr Strafford), Rebecca Siddell (Legal Advisor), Gregory Weaver (Democratic Services Officer) and (Phillipa Wyatt (Resident Representative).
- 21.2 The Licensing Officer addressed the panel and stated the following:

“This is an application for a new Premises Licence for 32 Blatchington Road. Hove.

The venue is described on the application form as a wine bar with cocktails, local craft beers with light snacks, tea and coffee.

The application now seeks the licensable activity of Sale of Alcohol, both on and off the premises from 11am to 11pm every day, with opening hours of 11am to 11.30pm. The last 30 minutes will be for the consumption of alcohol purchased at or before 11pm and is not considered a licensable activity.

This is a change from the original application as outlined on page 6 of today’s agenda, which asked for;

- Both on and off sales of alcohol, from 11am to 2am every day.
- Live and recorded music and Late-Night Refreshment until 1.30am every day.
- The opening hours originally requested were from 11am to 2.30am every day.

The application was amended following representations received against the application and circulated via Addendum 3.

The amendments were the aforementioned changes of hours as well as;

- The complete removal of Live and Recorded music from the application,
- The removal of Late Night Refreshment from the application, and
- Given the removal of live and recorded music, the applicant wishes to withdraw condition No 6, offered under the heading Public Nuisance, from the application. They state this condition is no longer necessary or appropriate given the removal of the Licensable Activities of Live and Recorded music.

Condition 6 referred to in Addendum 3 can be found on page 20 of the Committee Report and states ‘ *Live and recorded music will be played at such a level to ensure residents are not unduly disturbed. The level of sound will be under the control of the manager at all times*’.

Eleven representations were received during the consultation period from local residents, Sussex Police and the Licensing Authority.

The Representations had concerns relating to the licensing objectives of the Prevention of Public Nuisance and the Prevention of Crime and Disorder.

Addendum two contains information submitted by Sussex Police in support of their representation that can be found on pages 14-19 of Addendum 1.

Some of the representations mentioned Planning. To clarify, the planning application for this site was refused on the 15th of September. However, Planning and Licensing are two separate regimes, therefore the planning decision is not for the panel to take in to consideration when determining this application for a new Premises Licence under the Licensing Act 2003 today.

It is the responsibility of the Business operator to ensure they adhere to all relevant legislation and have the correct permissions and consents in place before operating from 32 Blatchington Road.

This Premises falls within the Special Stress Area.

The Special Stress Area is of concern to the Licensing Authority because of the relatively high levels of crime and disorder, and nuisance experienced within it.

New and Varied applications for premises within the Special Stress Area will not be subject to the presumption of refusal, but operators will be expected to pay special attention when drawing up their operating schedules, and to make positive proposals to ensure that their operation will not add to the problems faced in these areas.

The adoption of the Matrix approach to licensing decisions found in the Statement of Licensing Policy and today's agenda on page 10, includes a table with provisions for a terminal hour for all classes of license premises in a particular area, recognising the diverse operations and different risks presented by those premises. Notes on the matrix can be found on pages 10 and 11 of today's agenda.

On receipt of any application in the Special Stress Area, where relevant representation has been made, the licensing authority will scrutinise the application carefully and will look at the measures proposed in the operating schedules and compare them to measures set out in Appendix A of our Statement of Licensing Policy, Licensing Best Practice Measures. Found on Page 34 of the SoLP.

There is discretion to depart from the policy if exceptional circumstances have been demonstrated.

Where discretion has been engaged, those applications which fall short may be refused or conditions applied to comply with policy measures. (SoLP 3.2.3)

It is important to note that each application will be given individual consideration on its own merits."

Questions of Licensing Officer

- 21.3 In response to Councillor Simson, the Licensing Officer stated that off sales were still on the application and that the pub was in the special stress area which allowed for it to be open till 11pm.

21.4 In response to Councillor O'Quinn, the Licensing Officer stated that the premises had been a tattoo premises.

Representation from Sussex Police

21.5 The Sussex Police representative addressed the panel and stated the following:

“Sussex Police received this application on 29th July 2020 and requesting amongst other things was the sale of alcohol both on and off sales between the hours of 11:00-02:00 7 days a week.

An offer to pull these hours back was made via email on 15th Sept and then further reduced on 17th Sept.

It's our understanding that the applicant is now applying for supply of alcohol between the hours of 11:00 – 23:00 Monday through to Sunday with closing time of 23:30. This being both on and off sales. No other licensable activities are being requested.

Despite the reduced hours, Sussex Police are here today standing by our representation against this application and requesting the panel refuse it, just as we did with the planning application of which we understand has been refused.

The location of these proposed premises is at 32 Blatchington Road, Hove which under the Brighton & Hove Statement of licensing policy, falls within the Special Stress Area.

Paragraph 3.2.1 of the policy states:

“This Special Stress Area is of concern to the licensing authority because of the relatively high levels of crime and disorder and nuisance experienced within it.”

Reviewing crime data just on Blatchington Road for 2019, the majority of incidents sit within violence, ASB and theft categories. Out of all the calls made, reviewing the ones that occurred in a business or public space, 84 calls were received with 29 involving some form of violence, 2 drugs, 30 ASB and 23 theft/shoplifting. Most of these incidents occurring mid-afternoon in to early evening. Late night incidents are limited along this road but this reflects the fact that the area has less footfall in the evenings. This could change with a new bar opening.

Further evidencing this, under the Public Health Framework report for Assessing Alcohol Licensing 2019 edition, Central Hove ward, of which this location is within, is ranked 4th out of 21 wards for police recorded alcohol related incidents.

From reviewing the application it feels very much like this will be a bar operation. No café style conditions have been offered, the trading hours don't reflect a café style as it will not open until 11:00 each morning. And within the plans there appears to be no kitchen or food prep area.

Sussex Police believe that just by its very nature of being a bar, by granting this licence we are likely to see a negative impact within this area by way of increased crime and disorder and public nuisance. This concern is raised by the fact the description of the

premises is Wine bar / cocktails / craft beers – all of which tend to have a higher alcohol ABV content.

A recent visit to the location has shown to me that this is not an ideal place for a new bar. On visiting the area the main thing that stands out is how residential that end of the road is. It has a number of residential properties above and opposite the proposed premises as well as in nearby side streets such as Connaught Terrace, Brooker Street and Belfast Street.

On reviewing the local mix of premises already there, which can be seen on pages 5-6 of addendum 2 of your pack, between Sackville Road and George Street there are 67 premises. 69% of these are a variety of retail shops which close around 5-6pm. 13% are non-licensed cafés / fast food premises. 17% are premises with either an on and or off licence such as restaurants and off licences or a late night refreshment licence. There are currently no bar/pubs along this stretch of road. Due to this area being residential and the majority of the retail outlets not open in to the evenings, you would imagine this area to be relatively quiet in the evenings. Outside of office hours, Sussex Police do tend to receive public nuisance type of calls as the public will be aware that we are a 24/7 service and can attend when other agencies maybe don't have the same level of resourcing. The risk of permitting this licence is that we will see an increase in intoxication levels in the area, which in turn tend to cause public nuisance issues which are mostly in the evenings and so will rely on police resources to deal. When taking this in to consideration at the weekends, the calls would fall to our night shift offers to deal with as our main night time economy police resourcing (Op Marble) does not cover this area of the City.

Although Sussex Police are unable to support this application, should the panel wish to grant it, there is included within your pack on pages 17-19 of addendum 1, a number of conditions that we hope will mitigate some of the risk and we kindly ask you to consider implementing some or all of these.

Taking in to account our comments, the Statement of Licensing policy, Public Health framework report and the location of the proposed premises – especially being residential, we kindly ask the Licensing Authority to refuse granting this application.”

Questions of Sussex Police

- 21.6 In response to Councillor O'Quinn, the Sussex Police Representative stated that alcohol had a negative effect on people across the city and that this would affect noise. Agreement was expressed regarding the sale of cocktails and high alcohol content, it was stated that wine bars tended to cause more issues and that recreational drugs tended to be taken more at these types of bars.
- 21.7 In response to Councillor Simson, the Sussex Police Representative noted that the applicant had applied for a café licence and at Pride applied for a TEN at Strafford Car Rental Firm which was objected to.
- 21.8 In response to Ms Wyatt, the Sussex Police Representative stated that the property at No 72 Italian Restaurant had a licence which ran till 2 and that when it was a bar, there was a high number of calls regular to the premises regarding intoxication and fighting between 2011 and 2015.

21.9 In response to Mr Wright, the Sussex Police Representative reaffirmed that this licence application was for a bar and that it was not fair to compare this to other licensed venues.

Representation from Licensing Authority

21.10 The Licensing Authority Representative addressed the panel and stated the following:

“Thank you chair. I’m sure you have seen my representation on behalf of the Licensing Authority which can be found from page 11 Addendum 1 of today’s agenda. (As we have heard) The application is for a Wine bar selling cocktails and local craft beers with light snacks, tea and coffee and proposed the sale of alcohol until 02:00, Live and recorded music and late night refreshment until 1:30am which fell outside of the Councils statement of Licensing policy but these times have since been reduced by the applicant.

The grounds for my representation are that the application is contrary to the Council’s Statement of Licensing Policy (SoLP) and may undermine the Licensing objectives of the prevention of crime and disorder and the prevention of public nuisance.

The times are now within the Matrix in our policy but the premises falls within the Special Stress Area (SSA) and may undermine the Licensing objectives of the prevention of crime and disorder and the prevention of public nuisance and therefore I have not withdrawn my representation.

I therefore ask the panel to consider the application.”

Questions of the Licensing Authority

21.12 In response to Councillor Simson, the Licensing Authority Representative stated that as the application was within the Special Stress Area, this could undermine the Licensing Objectives with regard to crime and noise however conditions could be placed to try and mitigate this. It was further stated that the applicant had complied with the matrix and however considerations were necessary due to the location of the area.

Representation from Resident

21.13 Ms Wyatt addressed the panel and stated the following:

- This representation was on behalf of both Mr Steven Laycock as well as herself.
- Currently, people stood outside the building during the day and that there was a serious issue regarding the smell of smoke from cigarettes which entered the building and hallways.
- Noise was not an issue when the previous premises was a tattoo parlour. It was noted that residents were concerned with the prospect of an increase in noise pollution as a result of alcohol and an increase in footfall.
- It was asserted that there were no measures in place to stop people congregating outside the venue even after it shut at 11pm.
- Mr Laycock had concerns regarding smoking and noise and the prospect of public disorder.

- It was stated that he would be nervous to walk down roads at night as a result of the increase in alcohol intake and activity as a result of the licence.

Questions of the Resident Representative

- 21.14 In response to Councillor O'Quinn, Ms Wyatt stated that the building was smack and that it had a garden. It was noted that Mr Laycock had concerns that anyone in the premises of the wine bar would be able to overlook his garden.
- 21.15 In response to Councillor Deane, Ms Wyatt stated that the wine bar would be on the ground floor. It was noted that in the past, previous businesses were not open in the evening.

Applicant Representation

- 21.16 The applicant addressed the panel and stated the following:
- The premises was very small. The rear of the premises was not attached to the proposed bar and there would be a solid wall to the back of the premises.
 - The application had been amended to fit in with the matrix.
 - The addition of off sales was in conformity with the policy which was agreed an 11pm finish. The applicant was happy to remove off sales from the application.
 - Bottles of wine and beer would be very expensive and it was reaffirmed that this was not a regular bar. It was further stated that the price of a bottle of wine would be very high.
 - Reference was made to concerns of noise and it was noted that neither Environmental Health or a Planning Officer had made a representation which was evidence that this would not be an issue.
 - It was stated that police made reference to anti-social behaviour at other premises and not this venue, therefore this was irrelevant.
 - It was noted that Bungaroosh premises was well run and well managed despite the offering of alcohol till late.
 - It was noted that owners and operators would offer an incident book should something occur which could be used to ban people for life.
 - Conditions had been offered such as CCTV to make the area safer.
 - It was suggested that police could have access to this.
 - It was noted that there was a need for balance, reference was made to a study by Oxford University which found that it was good to live near a pub and enjoy the social benefits.
 - Reference was made to the Campaign for Real Ale which found that it was good to encourage a social environment.
 - It was stated that SIA had been requested and that the applicant would be happy to take instruction from this.
 - Questions were raised as to the origin of a 50% increase in crime and how far that was spread from the proximity of the venue.
 - It was stated that there was no evidence to suggest that the operation of this premises would attract anti-social behaviour or drug use.

Questions of the Applicant

- 21.17 In response to Councillor Simson, the applicant gave a brief overview of the plans and stated that this would not be in operation depending on demand. It was further stated that the venue would also be used as a space to have coffee and other beverages not just alcohol. It was noted that statistics showed that there were very few smokers. It was further noted that the proportion of off sales was expected to be very small and that the venue would likely just be used by a passing customer in search of a more expensive wine. Children would be welcome until a certain time.
- 21.18 In response to Councillor O'Quinn, the applicant stated that the original application was submitted to afford flexibility, and that the catchment area comprised of around 20000 people within walking distance and that seating was to be limited to between 8-10 people.
- 21.19 In response to Councillor Deane, the applicant stated that food would be limited to cold snacks, that the DPS holder was 35 and sensible. It was further stated that the conditions offered were similar to those provided by police and that they were happy to trial the use of SIA.
- 21.20 In response to Sussex Police, the applicant stated that if the elevated prices didn't work then the premises could be sold off in future. It was further stated that the elimination of vertical drinking would be a disproportionate measure. It was stated that the final capacity would be determined by the fire safety risk assessment and that the purpose of the venue was not to facilitate pre-loading. It was clarified that if there was to be a variation then an application would need to be submitted. It was confirmed that there was no access to the rear of the venue and that use of the garden was not sought.
- 21.21 In response to the Resident representative, the applicant stated that it would be impossible to ascertain the motives of clientele, however an environment that was antithetical to this would be fostered. It was noted that legislation had been complied with, that a light blue notice which highlighted the application had been published and that notification was set on the Council website. It was confirmed that the age range of clientele was to be between 30-50 and that it was difficult to control what customers decided to do outside of the venue.
- 21.22 In response to the Licensing Authority Representative, the applicant stated that the plan was for people to be self policing, concern was expressed with suggested condition which sought to mitigate smoking outside.

Summaries and Decision

- 21.23 The Licensing Officer addressed the panel and stated the following:

"This is an application for a new Premises Licence for a wine bar at 32 Blatchington Road. Hove.

The application seeks the licensable activity of Sale of Alcohol, both on and off the premises from 11am to 11pm every day with opening hours of 11am to 11.30pm.

You have heard from all parties present.

Licensing Guidance states that:

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- The steps that are appropriate to promote the licensing objectives;
- The representations (including supporting information) presented by all the parties;
- The Guidance;
- Its own statement of licensing policy

It is important to note that each application will be given individual consideration on its own merits.

After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule.

There is discretion to depart from the policy if exceptional circumstances have been demonstrated.

If the Panel decide to grant the application then any conditions added to the licence to meet the Licensing Objectives should be clear, precise and enforceable.

Alternatively, the licensing authority may refuse the application on the grounds that granting the application, will undermine Licensing Objectives and conditions would be ineffective.”

21.24 The Sussex Police Representative addressed the panel and stated the following:

“Sussex Police have gone over our concerns in regards to crime & disorder and public nuisance especially with this being within a residential area. We highlighted also the risk of off sales, drugs and with no vertical drinking restriction being offered, there is lack of information on what the capacity will be.

We are concerned that by granting this licence it would have a negative impact on the surrounding area and on police resources.

If the panel decide to grant the licence, we have supplied a number of conditions of which we ask the panel to consider, especially the SIA one of which – at a later date the applicant can submit a variation should they wish to apply to alter it through the normal process rather than having a time limit of 6 months on it.

It’s of the reasons I have gone through we ask the panel to consider refusing this application.”

21.25 The Licensing Authority Officer made no further statement.

21.26 Ms Wyatt addressed the panel and stated that her concerns had not been allayed.

21.27 The Applicant addressed the panel and stated the following:

- Attention was brought to the conditions on the licence.
- It was reaffirmed that there was no evidence to show that the area would attract drugs or nuisance.
- It was stated that the applicant had taken resident's comments seriously and that this was a suitable venue for the area.
- It was reaffirmed that CCTV and a trial period with SIA security had been offered to make the area safer.

21.28 **RESOLVED** – that the panel's decision was as follows:

"The panel has read all the papers including addendums, and has considered the written representations and submissions made at the hearing.

The application is within the Special Stress Area (SSA) as defined in the Statement of Licensing Policy which is an area of concern to the licensing authority because of the relatively high levels of crime and disorder and nuisance experienced with in it.

The application is for a small wine/cocktails/local craft beer bar with light snacks and tea and coffee. The application originally proposed to open until 02.30 each day with sale of alcohol until 0200 hours and regulated entertainment to 01.30 each day. The applicant has amended the application twice. The latest amendment and thus the current application before us is for sale of alcohol both on and off the premises every day from 11:00 hours to 23:00 hours with closing time 23:30 hours. All regulated entertainment has been removed from the application.

Relevant representations were received from Sussex Police, the Licensing Authority and 9 local residents. The concerns raised related to the prevention of public nuisance and prevention of crime and disorder licensing objectives. The police considered that this type of venue – a wine or cocktail bar - would have a negative impact on the area which was in the SSA and residential with retail outlets and no pubs or bars along this stretch of Blatchington Road. They had concerns about crime and disorder and risk of drug use. The residents were concerned about increased footfall and noise disturbance in the evening and smoking issues. There were also concerns about crime and anti-social behaviour and use of outside spaces.

On behalf of the applicant it is stressed that these are very small premises with no outside areas to be used. They did not have the Fire safety Assessment figure yet but estimated about 12 people drinking in the premises mostly sitting on fixed seats around the bar. They were going to install air conditioning so that the doors could remain closed. The drinks would be high quality and expensive with no draught beers. Smoking would be discouraged generally but if people had to smoke it would be outside on the pavement.

A number of conditions were offered in the operating schedule. The police also put forward a number of conditions in the event the application was granted. The applicants have agreed to many of these but not to those relating to door staff.

The panel has considered this application carefully especially in view of the continued representations and concerns from the Police and local residents. The panel is very aware that the application is within the special stress area. However the application now before us is very different from that originally proposed. It is now largely within the scope of our policy and within Matrix approach save for the off-sales element. We have been able to clarify a number of issues through questioning as well as canvassing further conditions. We do have still have concerns about the off sales element and consider that it is not appropriate in this area in view of the relatively high levels of crime and disorder and nuisance experienced within it and its residential nature.

Having regard to this application on its individual merits we note that it is a very small operation with no outside consumption of alcohol. We consider that with comprehensive conditions attached to the licence, the premises with on sales only, can operate to promote the licensing objectives and not add to problems in the area. A further condition relating to smoking will deal with some of the concerns raised by residents and we consider that the potential for public nuisance and crime and disorder is minimal with such conditions attached.

The application is therefore granted in respect of on sales only and with all the conditions offered in the operating schedule save for the condition (6) relating to live and recorded music (see pages 19 to 21 of the papers). With regard to the condition 2 for the prevention of public nuisance the panel add the following: *Only 2 customers at any one time shall be permitted to smoke in the front external area.* (We note there is already a condition that smokers may not take their drinks outside with them.) The panel considers that most of the conditions proposed by the police are appropriate and proportionate and should be attached to the licence. These are attached to the police representation and include ensuring that the designated premises supervisor or another personal licence holder are present on the premises from 20:00 each day, use of the backup services of an approved mobile support unit, and measures to ensure a zero tolerance policy towards drugs. The panel does not consider that conditions 4 and 5 relating to provision of door staff are proportionate in this case and so these are not attached to the licence.”

The meeting concluded at 1.10pm

Signed

Chair

Dated this

day of