

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

10.00am 1 OCTOBER 2020

VIRTUAL MEETING - SKYPE

MINUTES

Present: Councillor ; Simson, Appich and Deane

Officers: Becky Pratley (Technical Officer), Mark Savage-Brookes (Licensing Officer), Rebecca Siddell (Legal Advisor), Gregory Weaver (Democratic Services Officer)

PART ONE

22 TO APPOINT A CHAIR FOR THE MEETING

22.1 Councillor Deane was appointed Chair for the meeting.

23 PROCEDURAL BUSINESS

23a Declaration of Substitutes

23.1 There were none.

23b Declarations of Interest

23.2 There were none.

23c Exclusion of the Press and Public

23.3 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).

23.4 **RESOLVED** - That the press and public be not excluded / excluded from the meeting during consideration of Item 24 onwards.

24 STOCKBEV LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

- 24.1 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 Stockbev, 7 Duke Street, Brighton, BN11AH. Present at the hearing were: Becky Pratley (Technical Officer), Mark Savage-Brookes (Licensing Officer), Mark Thorogood (Sussex Police), Vincent Lamb (Sussex Police), Chirag Patel (Applicant), Rowan Jenkins (Barrister), Rich Mehotra (Applicant Business Partner), Rebecca Siddell (Legal Advisor), Gregory Weaver (Democratic Services Officer).

Introduction from the Licensing Officer

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

“This is an application for a new premises licence for Stockbev, 7 Duke Street, Brighton.

In the application, the operation of the premises is described as ‘a shop specialising in the sale of alcoholic beverages, spirits, beer and wine’. The premises comprise a basement and ground floor which will be sales areas retailing alcoholic and non-alcoholic drinks and food items.

Since making the initial application the applicant has submitted a letter containing additional supporting information about the business. This letter forms the Addendum paperwork which was circulated to Panel Members and a copy was placed on the website against the papers for today’s hearing for all parties to access. I’m aware that the applicant also sent this to all those who made representations.

Although the application submitted proposed a 24hr operation, this was reduced to a 9am – 2am operation within the consultation period. The proposed hours have been further reduced by the applicant to 9am – 10pm every day for Sale of Alcohol on and off the premises.

The further reduction of hours is highlighted at the bottom of page 6 within the Addendum paperwork and the applicant also describes in more detail in their letter the ‘on’ sales part of the application, which is to be solely allocated to tasting sessions.

The licensing team received twenty relevant representations, and these were from The Licensing Authority, Sussex Police, a local resident association and a mix of local businesses and local residents. Please note that Rep N (N for November) on page 39 of the papers has since been withdrawn, so there are 19 representations outstanding.

Relevant concerns raised in the outstanding representations are in relation to the licensing objectives the Prevention of Crime and Disorder and Prevention of Public Nuisance. Cumulative Impact has also been raised as a concern. The representations can be seen from pages 23 – 48 of today’s papers and the applicant and Panel have been furnished with unredacted copies of these.

As detailed in the council’s Statement of Licensing Policy the premises are located in the city’s Cumulative Impact Area. The Special Policy for Cumulative Impact states that applications for new licences will be refused following relevant representations. The

applicant can rebut this presumption of refusal if they can show that their application will have no negative cumulative impact on licensing objectives.

The Council's Statement of Licensing Policy states that this special policy is 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 policy. If an application is unlikely to add to the Cumulative Impact of the Area, it may be granted. The onus is on the applicant to demonstrate exceptional circumstances and satisfy the Panel that they will not impact negatively on the Cumulative Impact Area.

In addition to the special policy on cumulative impact, the Council's Statement of Licensing Policy includes a Matrix Model approach for licensing decisions, which recognises the diverse operation and different risks presented by different classes of licensed premises. It provides a vision of what the licensing authority would like to see within its area and gives an indication of likelihood of success or otherwise to investors and local businesses making applications.

Although a different test to the special policy on Cumulative Impact, the Statement of Licensing Policy, as represented within the Matrix will be strictly adhered to and departure from it is also expected only in exceptional circumstances.

My final point is to remind the Panel that each application shall be given individual consideration on its own merits."

Questions of the Licensing Officer

- 24.3 In response to Councillor Appich, the Licensing Officer stated that since the application had been made the applicant had engaged with BHCC for advice with regard to the Licensing Statement of Policy.
- 24.4 In response to Councillor Deane, the Licensing Officer stated that the original application was made for a 24 hour operation which would have prompted Licensing Officers to contact the applicant to provide information regarding the Matrix model.

Representation from Sussex Police

- 24.5 The Sussex Police representative addressed the panel and stated the following:

"As mentioned, this is an application for a new on and off alcohol licence at 7 Duke Street, Brighton. Initially the application was for 24hrs, then reduced to 02:00 close upon receiving representations and now further reduced to 22:00 closure 7 days a week.

We understand the premises is currently a clothing shop and has not previously held a premises licence. The immediate surrounding area is a mix of independent daytime retail outlets and a number of pubs / bars, off licences, restaurants and cafes. With The Lanes and West Street very close by, it falls very much within the heart of the City's Night Time Economy. There are also a number of residential properties within the surrounding area.

On reviewing the application it is clearly an alcohol led business. Within the application it states that the premises will specialise in the sale of alcoholic beverages including spirits, beer and wine and that the licensable area covers both the ground and basement floors of the building.

Reviewing the Public Health Framework report for Assessing Alcohol Licensing 2019 edition, Regency ward, of which this location is within, is ranked 2nd out of 21 wards for police recorded alcohol related incidents. Excluding criminal damage of which this ward is 3rd, the area is ranked worse for all other crime data including violence and sexual offences.

This is an application for an alcohol licence within a very busy part of the City and an area that already has a high number of licensed premises be that drinking establishments, off licences, restaurants or cafes.

Under the matrix approach within the Brighton & Hove City Council Statement of Licensing Policy – a new off licence within the “Cumulative Impact Area” is not supported.

Paragraph 3.1.4 of the policy states this can be overridden in exceptional circumstances.

Paragraph 3.1.5 states further that off licences also come within this policy as they can contribute to problems of street drinking, proxy purchasing, dispersal issues, preloading and excessive drinking and related disorder.

We do have concerns over issues we currently experience within the locality in regards to street drinking, theft of alcohol from shops, proxy sales and preloading. Theft of alcohol increases ASB within the locality and especially within public spaces such as nearby New Road. At some premises you see SIA security on duty during the day, not just within the evenings so proving issues are not restricted to just evening and night times.

Due to the risks associated with alcohol, the City has a number of initiatives that support Police and other emergency services in safeguarding the general public. These include Beach Patrol, Safe Space, Good Night Owls and Street Pastors. The majority of these organisations are run by volunteers and operate in their spare time. The fact these services exist goes some way to prove the negative impact alcohol has.

With high numbers of persons descending on the City, Sussex Police operates a standalone night time operation each weekend and at other various peak times throughout the year. This involves dedicated Police resources patrolling the main night time economy area to free up our night duty officers so they can manage the rest of the City and the demands it has on our service. Having a visible police presence in the area, especially during the weekend evenings, goes some way to assist in reducing criminal incidents occurring, but unfortunately does not stop them in their entirety. The majority of incidents dealt with have an element of alcohol linked to them. This is a mix of persons becoming drunk and disorderly, violent and a high number of incidents involve persons who have become a victim of crime due to their own vulnerability after consuming alcohol.

Taking in to consideration “exceptional circumstances”, we appreciate the detailed document that was emailed to us by the applicant on Sunday 27th Sept that explains in detail the style of operation they are aiming to run however, we have concerns over how the style of products and operation can be conditioned on the licence in a way to safeguard that this premises, which is on 2 floors, cannot be run as just another standard off or on licence and meets the criteria of “exceptional circumstances”.

Without robust conditions, of which we are unsure how these can be achieved, Sussex Police are currently unable to support this application.”

Questions of the Sussex Police Representative

- 24.6 In response to Councillor Simson, the Sussex Police Representative stated that it appeared the entire premises would be heavily alcohol led.

Representation from the Licensing Authority Officer

- 24.7 The Licensing Authority Officer addressed the panel and made the following statement:

My representation on behalf of the Licensing Authority is rep D and can be found on pages 26 and 27 of today’s agenda.

“Part of my role as a Licensing Officer is as a guardian of our Statement of Licensing Policy, and to uphold this policy which provides a vision of what the Licensing Authority would like to see within its area. My representation was made on the grounds of the Prevention of Crime and Disorder and the Prevention of Public Nuisance and to uphold our Statement of Licensing policy so that the panel can determine the application today.

It is up to the applicant to show what exceptional circumstances there are to depart from the policy. The application seeks a new Premises Licence within the heart of the Cumulative Impact Area for the licensable activity of the Sale of Alcohol both On and Off the premises. The applicant has changed the hours twice since originally submitting the application. Before the panel today is a request for both on and off sales of alcohol between the hours of 9am and 10pm daily.

These hours, whilst much decreased from the original 24 hours a day applied for, are still contrary to our Statement of Licensing policy. The matrix found in our policy and in today’s agenda on page 10 says ‘no’ to Off licences. It also says ‘no’ to a pub within this area. Addendum one page 7, now makes clear the intention is not to be a pub but a contemporary shop for beer, wine and spirit. However, the applicant has not offered a condition specifically restricting the sale of alcohol for consumption On the premises, only to customers who have online and pre-booked for tasting courses and the learning experience. Or that On sales needed for the educational or course times will be limited from 10am – 6pm. Therefore if granted, without any conditions to the contrary this premises could operate as a pub.”

- 24.8 In response to Councillor Simson, the Licensing Authority Officer agreed that there was a single line in the application which stated that the applicant would sell ambient food, it was noted that there was no kitchen.

- 24.9 In response to Councillor Deane, the Licensing Authority Officer clarified that, by the definition of the matrix, the application was effectively one for a pub.
- 24.10 In response to the Barrister, the Licensing Authority Officer stated that conditions sought would help to address this however it would need to be shown that there wasn't the ability for the business to retain an off-sales model should the business fail.

Representation from Applicant

24.11 The Barrister addressed the panel and stated the following:

- It was stated that the application had been accepted and that it was for the applicant to demonstrate that this application was unlikely to add to the existing cumulative impact.
- It was stated that the original application was for an off licence for 24 hours.
- It was admitted that the original application reflected the applicant's lack of experience.
- It was stated that the applicant was aware of concerns regarding the large scale selling of alcohol.
- It was stated that this application was for a niche end and not another off licence.
- It was stated that the more expensive price would steer customers looking for cheap alcohol away.
- It was stated that the application was aimed to be for tasting and advice led business.
- It was stated that the aim of the business was to enhance the image and reputation of the area.
- It was stated that the application would not add to the cumulative impact and the aim was the opposite.
- It was stated that now was the right moment for BHCC to allow businesses to flourish in light of Covid-19 and its adverse effect on businesses.

Questions of the Applicant

- 24.12 In response to Councillor Appich the applicant stated that they had wholesale experience and that the much research had been carried out on how alcohol was produced. It was stated that the focus of the business was to provide educative lessons in this art form.
- 24.13 In response to Councillor Simson the applicant stressed that the business would be involved in "high end" sales. It was stated that the business would look to utilize amazon to provide delivery service of goods and that the delivery would be through DHL. It was reaffirmed that there would be signage to discourage any drinking would not be allowed on premises.
- 24.14 In response to Councillor Deane, the applicant stated that they were not originally aware of the Cumulative Impact Zone policy. It was stated that the applicant sought to sell products from different countries and that items sold would largely be unavailable in supermarkets. The applicant set out the hours of operation and potential employee numbers.

- 24.15 In response to the Sussex Police Representative the applicant stated that the objective was for patrons to taste products and purchase on site. It was clarified that employees would have more than 5 years experience and City and Guild certified. It was further clarified that the DPS would be another person and that staff would be trained. It was stated that any product purchased would be so in a venue that had security. The applicant gave an overview of lesson durations and what would be taught.
- 24.16 In response to the Licensing Authority Officer the applicant stated that the shop capacity was low between 10-20 people, that sales of alcohol would be made. The applicant stated that they were happy with hours of operation ending at 8pm, educational sessions would be a minimum of 1 hour and tasting section around 20 minutes. It was confirmed that there would be no drinks outside and that there would be door supervisors Monday to Sunday 7pm – 10pm. The applicant agreed to commit to having 1 hour of SIA provision.

Final Summaries and Decision

- 24.16 The Licensing Officer addressed the panel and gave the following final summary:

“This is an application for a new premises licence for Stockbev, 7 Duke Street, Brighton.

The proposed licensing activity and hours are for the sale of alcohol on and off the premises, from 9am – 10pm every day

Nineteen representations remain outstanding against this application and you have read these and now heard from all the parties present today.

The council’s Special Policy for Cumulative Impact states that applications for new licences will be refused following relevant representations. The applicant can rebut this presumption of refusal if they can show that their application will have no negative cumulative impact on licensing objectives.

Licensing Guidance issued under Section 182 of the Licensing Act states in Section 14.44 A CIA should never be absolute. Statements of licensing policy should always allow for the circumstances of each application to be considered properly and for applications that are unlikely to add to the cumulative impact on the licensing objectives to be granted. After receiving relevant representations in relation to a new application for or a variation of a licence or certificate, the licensing authority must consider whether it would be justified in departing from its CIA in the light of the individual circumstances of the case.

Licensing Guidance also 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 necessary to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- the Guidance;
- its own statement of licensing policy

The Panel should decide whether the applicant has demonstrated that their application will have no negative impact and whether there are exceptional circumstances to justify departing from its special policy.

If the applicant has demonstrated that it will not impact negatively then the Panel should consider granting the application, and any conditions to meet Licensing Objectives should be clear, precise and enforceable. A raft of conditions has been supplied by Sussex Police and the applicant has offered conditions in their submission, which the Panel could apply if they are minded to grant the licence.

If the panel believe the application will add negatively to the existing Cumulative Impact and the applicant has failed to demonstrate how they would counteract that negative impact then the Panel should consider refusal. If the licensing authority decides that an application should be refused, it will still need to show that the grant of the application would undermine the promotion of one or more of the licensing objectives and that appropriate conditions would be ineffective in preventing the problems involved.

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

24.17 The Sussex Police Representative addressed the panel and gave the following summary:

“Sussex Police appreciate that the applicant is wanting to bring in a certain style of operation however, this has been acknowledged that this is not possible to condition. The locality already has a high number of different styles of licensed premises which in turn brings many challenges to police and other emergency and voluntary services. It’s for the reason we are unable to support this application.”

24.18 The Licensing Authority Officer addressed the panel and gave the following summary:

“My representation is on behalf of the Licensing Authority was submitted because as a Licensing Officer, part of my role is as a guardian of our Statement of Licensing Policy and to uphold this policy, which provides a vision of what the Licensing Authority would like to see within its area.

This application falls outside of this policy by applying for ‘Off’ sales within the Cumulative Impact Area and ‘On’ sales without restrictive conditions such as café, restaurant or other, which could mean it could operate as a pub is a pub. My representation was made on the grounds of the Prevention of Crime and Disorder and the Public Nuisance and to uphold our Statement of Licensing policy so that the panel can determine the application today.”

24.19 The Applicant addressed the panel and requested a condition that would clarify the business would not be operating as a pub or on the consumption of leisure purposes on site.

24.20 The Solicitor stated that the panel had a clearer view of the intention of the business and that the focus of the panel was on how to place the necessary restrictions / condition to minimise concerns.

24.21 **RESOLVED** – that the panel’s decision was as follows:

“The Panel has read all the papers including the report and relevant representations and additional papers, and listened to all the arguments and submissions made today.

This is an application for a new premises licence within the Cumulative Impact Zone (CIZ) and therefore is subject to the special policy on cumulative impact as set out in the Statement of Licensing Policy. The application is for an off-licence with limited on sales to operate from 09.00 to 22:00 every day. The application was initially for 24 hour licensable activities and opening and has been amended in 2 stages to the current times. There were 19 remaining representations from Sussex Police, the Licensing Authority, local residents and local businesses.

Our policy states that applications for new premises licences 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. The special policy will only be overridden in exceptional circumstances. However, the policy is not absolute and the panel must consider the circumstances of each case and whether there are exceptional circumstances to justify departing from its special policy in light of these. If an application is unlikely to add to the cumulative impact of the area it may be granted. The policy goes on to stress that the impact can be expected to be different for premises with different styles and characteristics, especially where alcohol is not the primary focus. In terms of off-licences our policy states that these come within the policy as they can contribute to problems of street drinking, proxy purchasing, dispersal issues, preloading and excessive drinking and related disorder.

The representations highlight the challenging nature of this area in the heart of the city’s night time economy. It is an area with a very high number of licensed premises and it is asserted that any more alcohol made available can only have a detrimental effect on the area. The Regency ward ranks highest or second highest in the *Public Health Framework for Assessing Alcohol Licensing* (5th edition – January 2019) for violent and alcohol related crime and disorder. The police highlight the fact that the applicant is not able to turn his intentions for the business into enforceable conditions and that the risk of another off licence in this area is too great. They contend that no exceptional circumstances have been shown to depart from the special policy.

The applicant has submitted an addendum letter of intent dated 25th September 2020 in which he explains his plans for the business and puts forward some measures in support of his application. The intention is to establish a high quality premises stocking a wide variety of high end speciality beverages from around the world for a more

professional market. Consumption on the premises would be limited to pre-booked tasting and educational courses or events in the basement area. The stated aim is to enhance the image and reputation of the area and not add to negative cumulative impact. Ultimately if the panel felt it was appropriate the applicant was willing to further reduce the hours of operation to end at 20:00 in the evening.

The panel has carefully considered all the arguments and submissions made. We have considered the individual circumstances and merits of this application and the policy context. The panel does not consider that the applicant has demonstrated that the application will have no negative cumulative impact or that it is exceptional.

The panel does appreciate that the applicant has passion and enthusiasm for what he would like to achieve at the premises. However, the measures and conditions proposed are not well thought out and too many of them are not clear, precise or enforceable. In our view the applicant demonstrates a lack of understanding of the licensing regime and of the policy context and this is evident in some of the measures proposed and in his understanding for instance of the role of the Designated Premises Supervisor. As the police have stated and as was conceded by the applicant's barrister, it is not possible to attach conditions to reflect much of the applicants' intentions for the business, for example the high end quality pricing and nature. We have considered the proposal to reduce the hours further but concerns still remain from the police about a day-time and early evening operation and the panel share those concerns. Ultimately, the panel are licensing the premises and this application is not exceptional in terms of our policy as it would be a further alcohol led off licence premises in a very challenging area. As such it is likely to add to negative cumulative impact and undermine the licensing objectives. The panel therefore refuse this application."

The meeting concluded at 12.33pm

Signed

Chair

Dated this

day of