

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

**10.00am 12 MARCH 2021**

**VIRTUAL**

**MINUTES**

**Present:** Councillor ; Deane, Appich and Ebel

**Officers:** Sarah Cornell, Senior Licensing Officer, Rebecca Sidell, Lawyer and Penny Jennings, Democratic Services Officer

**PART ONE**

**1 TO APPOINT A CHAIR FOR THE MEETING**

Councillor Deane was appointed Chair for the meeting.

**2 PROCEDURAL BUSINESS**

**Xa Declaration of Substitutes**

There were none.

Councillor X declared that he/she was substituting for Councillor X.

**Xb Declarations of Interest**

There were none.

Councillor X declared a personal but not prejudicial interest in Item X, a report of X concerning...

**Xc Exclusion of the Press and Public**

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).

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

**3 APPLICATION FOR A NEW PREMISES LICENCE, MR TIPSY ICE CREAM, 46 GEORGE STREET, BRIGHTON**

3.1 The Panel considered a report of the Executive Director, Housing, Neighbourhoods and Communities requesting that they determine a New Premises Licence application to manufacture and sell artisan alcoholic ice cream.

**Officer Presentation**

3.2 The Senior Licensing Officer, Sarah Cornell, explained that the application related to 46 George Street, a retail shopfront premises of approximately 53m<sup>2</sup>. It is situated in a street of mixed retail outlets, cafes, restaurants and pubs. The layout of the application was for a New Premises Licence under the Licensing Act. The premises was a rectangle which would be split into a commercial kitchen at the rear (to manufacture artisan alcoholic ice cream using local ingredients as far as possible) and a retail outlet with approximately 30 covers to the front for people to a) take away tubs of ice cream for home or takeaway for immediate consumption and b) to eat in. The off-supplies will therefore be only of alcoholic ice cream (nil to 10% ABV). In the seated part of the ice cream parlour ice cream (nil to 10% ABV) will be supplied to customers in the form of ice cream in tubs, as sundaes and a few ice cream cocktails and in hot drinks.

3.3 Two representations had been received, one from the Police and one on behalf of the Local Licensing Authority expressing concerns had concerns relating to Prevention of Crime and Disorder, Cumulative Impact and Prevention of Public Nuisance. These were detailed in the submitted paperwork. The Premises fell within the Cumulative Impact Area where there was a presumption of refusal unless an applicant could evidence that their operation would not have a detrimental impact and that an exception to policy was justified. It was noted that the Police had withdrawn their objections following discussion with the applicants who had agreed to comply with additional conditions which the Police had put forward.

**Licensing Authority**

3.4 It was noted that the applicant had engaged actively in dialogue with the Licensing Authority. However, as the premises were located within the CIZ there was a presumption of refusal and they considered that it lay with the applicant to make a case to the Panel that their application warranted an exception being made to policy.

**Submission by the Applicant**

3.5 **The** applicant stated that he had liaised with the police who have withdrawn their representation upon agreement to a set of conditions to be applied to the licence. These included that the only sale of alcohol permitted under the licence was by way of ice cream where alcohol is a part. No other alcohol would be sold on or off the premises. A condition was also agreed that at least 30% of the total ice cream on offer will be non-alcoholic and on display separately. There is one remaining representation from the licensing authority in their role as guardian of the licensing policy expressing concerns about the location of the premises within the CIZ and potential impact upon the licensing

objectives but he had sought to address that and had liaised with the Licensing Authority. This was a new style of operation which did not fit neatly within the matrix. His business was a unique offer but was essentially a dessert business and he would ensure that sufficiently robust measures were in place to ensure promotion of the licensing objectives. The Panel asked in depth questions of applicant in relation to the style of operation proposed and measures which they would put into place to ensure protection of the Licensing Objectives.

- 3.6 When no further issues were raised each of the parties were given the opportunity to make their closing submissions and each reiterated the points they had made during they had made during the course of meeting. The Panel the retired to make their decision which is set out below.

### **The Decision**

- 3.7 The Panel confirmed that they had read all of the submitted paperwork including the report and relevant representations and listened to all the submissions made at the hearing.
- 3.8 This was an application for a new premises licence within the Cumulative Impact Zone (CIZ) and therefore subject to the special policy on cumulative impact as set out in the Statement of Licensing Policy. The council's policy stated that applications for new premises licences would be refused following relevant representations unless the applicant had demonstrated that their application would have no negative cumulative impact. The special policy would only be overridden in exceptional circumstances. However, the policy was not absolute. Upon receipt of a relevant representation, the licensing authority would always consider the circumstances of each case and whether there were exceptional circumstances to justify departing from its special policy in the light of the individual circumstances of the case. If an application was unlikely to add to the cumulative impact of an area, it may be granted. The impact could be expected to be different for premises with different styles and characteristics.
- 3.9 The application was for sale of artisan alcoholic ice cream for consumption both on and off the premises. The applicant had liaised with the police who had withdrawn their representation upon agreement of a set of conditions to be applied to the licence. These included that the only sale of alcohol permitted under the licence is by way of ice cream where alcohol is a part. No other alcohol would be sold on or off the premises. A condition was also agreed that at least 30% of the total ice cream on offer would be non-alcoholic and on display separately. There had been one remaining representation from the licensing authority in their role as guardian of the licensing policy expressing concerns about the location of the premises within the CIZ and potential impact upon the licensing objectives.
- 3.10 The Panel recognised that there had been effective consultation with the police. This was a new and unique style of operation and did not fit neatly within the Matrix for decision making. The Panel was able to question the applicant fully about the application and nature of operation and canvass further conditions. The applicant had been keen to stress that this was primarily a dessert business with appropriate measures in place to ensure the promotion of the licensing objectives and which would add to the diversity of premises in the area.

- 3.11 The Panel was very mindful of the location of the premises in the CIZ and the need to ensure that the application would not add to problems in the area. To that end the Panel had concerns about future product development and wanted to ensure that very high strength products would not be available. The panel therefore imposed a further condition to go on the licence as follows:

*The alcoholic ice cream on sale shall not exceed 15% ABV, and no more than 10% of the alcoholic ice cream product range shall be between 11% and 15% ABV.*

The panel believes that there are exceptional circumstances relating to this application; the conditions agreed mean that the alcohol on sale will be limited to ice cream with a relatively low alcohol content in terms of the portions or scoops sold. As such it is a unique and exceptional operation with comprehensive control measures and not likely to add to negative cumulative impact in the area. The panel are therefore granting this application with all the agreed conditions to go onto the licence as we consider that the application is not likely to add to cumulative impact and will promote the licensing objectives.

- 3.12 **RESOLVED** – That the application by Mr Tipsy Ice Cream, 46 George Street, Hove be granted subject to the conditions set out above.

The meeting concluded at 11.35am

Signed

Chair

Dated this

day of