

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

10.00am 9 JANUARY 2023

VIRTUAL

MINUTES

Present: Councillors Simson (Chair); Knight and Moonan

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

PART ONE

1 TO APPOINT A CHAIR FOR THE MEETING

1.1 Councillor Simson was appointed Chair for the meeting.

2 PROCEDURAL BUSINESS

2a Declaration of Substitutes

2.1 There were none.

2b Declarations of Interest

2.2 There were none.

2c Exclusion of the Press and Public

2.3 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).

2.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of any item on the agenda.

3 THE CHICKEN CLUB LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

- 3.1 The Panel considered a report of the Executive Director, Housing and Neighbourhoods requesting that they determine an application for a New Premises Licence under the Licensing Act 2003 in respect of the Chicken Club, 72 Western Road, Brighton, BN1 2HA. Permission was sought to provide late night food and drink.

Officer Presentation

- 3.2 The Senior Licensing Officer, Sarah Cornell explained that the premises was located in the Cumulative Impact Zone, (CIZ) and that two representations in objection to the application had been received on behalf of the Police and the Local Licensing Authority. The representations had expressed concerns relating to the Prevention of Crime and Disorder, Cumulative Impact and the Prevention of Public Nuisance.
- 3.3 As it was located in the CIZ, a special policy was in place which would only be overridden in exceptional circumstances. The effect of this special policy was that applications for new premises licences or club premises certificates within the area, or variations which are likely to add to the existing Cumulative Impact would be refused following relevant representations, there was a presumption of refusal. This, was not absolute however and could be rebutted by the applicant if they could show that their application would have no negative Cumulative Impact. Each application was to be considered on its individual merit.

Representation – Sussex Police

- 3.4 The police were represented by Claire Abdelkader and a colleague who spoke in respect of the representation which had been received from Sussex Police.
- 3.5 It was explained that the police had visited the premises in August of that year following reports that the premises had been trading into the early hours without a premises licence. The premises had been serving hot food, several customers were seated inside eating without the necessary licence being in place and had closed once they had finished customers who had paid within 30 minutes of the police' arrival. Of particular concern was the fact that at that time a small group of school aged males (16 years old), had been in the premises, two of whom had needed to be escorted home by uniformed officers for their safety. Whilst it was acknowledged that a licence to sell alcohol was not being sought, offering food and drink into the early hours of the morning encouraged those who might already be under the influence of alcohol or drugs to remain in an area where the risk of crime and disorder and anti-social behaviour was recognised as being problematic. Whilst the presumption of refusal of an application for a new licence in the CIZ could be rebutted if the applicant could demonstrate that there would be no negative cumulative impact, a case for exception to existing policy had not been made.
- 3.6 Whilst the applicant had offered some information with their application the police did not consider that it was sufficient to mitigate any potential risk, nor gave any explanation of exceptional circumstances. The conditions offered did not mention security measures to be put into place, use of a mobile support unit contract, conditions offering an incident log, BCRP or training for staff. No conditions were referred to regarding delivery drivers, or, ensuring that delivery drivers would park legally and would not obstruct highways or footpaths.

- 3.7 The police considered that carrying on licensable activity for the hours applied for would add to the negative cumulative impact in an area already saturated with licensed premises and experiencing high levels of crime and that the application should therefore be refused.

Representation - Licensing Authority

- 3.8 The Licensing Officer, Donna Lynsdale, explained that the premises fell within the CIZ and that there were concerns that the application could have a negative impact on the licensing objectives of the prevention of crime and disorder and public nuisance. The applicant had not addressed the premises location within the CIZ and had also not demonstrated exceptional circumstances in order to depart from policy in the CIZ or how they would not add to the existing cumulative impact of the area. The council's matrix policy clearly indicated that "late Night refreshment" should not be granted within the CIZ and it was contended that this policy related to both new and variation applications. Again, the Matrix policy could be departed from where exceptional circumstances were demonstrated but the applicant had failed to address this.
- 3.9 The premises was located in the Regency Ward within the CIZ which was ranked worst out of 21 wards for all violence against the person, all injury violence, non-injury assault, sexual offences and second worst for police recorded alcohol incidents. This highlighted the impact that licensed premises in the area could have on crime and disorder and public nuisance. The onus was on applicants to demonstrate exceptional circumstances and it was not considered that the applicant had done so.

Applicant's Submission

- 3.10 The applicant, Mr Muhammed Shahzad was invited to speak in support of his application. Mr Shahzad explained that the legal advice which he had been given on taking on the premises had been poor and that he had not been aware that he needed to have a licence in order to provide late night refreshments outside specified hours.
- 3.11 Mr Shahzad went on to state that he was aware that a number of premises in the general vicinity of his own had a late terminal hour and that he wished to do the same in order to maximise the potential of his business and to provide a service to customers. He stated that this was a new venture for him and confirmed that he could not be selling alcohol. The business would be well run and that he also intended to sell niche market Asian food for which there was demand. Mr Shahzad was seeking the hours applied for as most of his business took place after 23.00 each day.
- 3.12 The Panel asked detailed questions of Mr Shahzad in order to clarify and confirm the manner in which it was intended that the business would operate whether it was intended that deliveries would be undertaken and to ascertain the applicant's understanding of the Licensing Objectives and the additional requirements in relation to premises located within the CIZ. The Police and Licensing Authority representative were also given the opportunity to ask and to respond to questions by the applicants.

Closing Submissions

- 3.13 A closing submission was made by the Licensing Officer following which each of the parties who had made representations and the applicant were also invited to make their final comments.
- 3.14 Each of the parties were given the opportunity to make their closing submissions and each re-iterated the points they had made during the meeting. Both the Police and Licensing Authority representatives who were present indicated that if the application was refused, should the applicant re-apply they would if approached by the applicant, provide advice regarding mode(s) of operation which might potentially be acceptable. The Panel then retired to make their decision which is set out below.

The Decision

- 3.15 The Chair, Councillor Simson explained that the Panel had read all the papers including the report and relevant representations and listened to all the submissions made that day. 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. That policy states that applications for new premises licences will be refused following relevant representations unless the applicant has demonstrated that their application will have no negative cumulative impact. The special policy will only be overridden in exceptional circumstances.
- 3.16 However, the 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 in the light of the individual circumstances of the case. If an application is unlikely to add to the cumulative impact of an area, it may be granted. The impact can be expected to be different for premises with different styles and characteristics.
- 3.17 This application is for a takeaway to provide late night refreshment from 23:00 hours to 05:00 hours every day. The decision making Matrix within the Statement of licensing policy indicates a 'No' to late night takeaways should be permitted in the CIZ. Two representations were received from Sussex Police and the Licensing authority. The representations had concerns regarding the prevention of crime and disorder, public nuisance and cumulative impact. The police visited the premises just after midnight on the 8th August 2022 during Pride and found they were open and serving hot food without a licence. When they were made aware the premises closed. There was also a group of school age 16 year old males within the premises. The police are concerned about the location of the premises in the CIZ close to Preston Street in an area which has a high number of licensed premises and high levels of crime and disorder. Late night takeaway venues can cause people to remain in the area who may be intoxicated and hinder effective dispersal. This would add to problems in the area. Although there was a supporting statement from the applicant no mention was made of the Special Policy or of any exceptional circumstances to allow departure from the policy. Conditions offered were limited and did not address the policy concerns. The licensing officer confirmed that they did get complaints about late night refreshment premises and people hanging around them. Both responsible authorities recommended refusal of the licence. After hearing the presentation from the applicant the police still invited the panel to refuse the application on grounds of cumulative impact but suggested if in the future the applicant

wished to consider a further application he should pre-consult with the police to see what advice they could offer.

- 3.18 The applicant had explained that this was his first licensing venture. There was a demand for hot food after 23:00 and a lot of neighbouring premises already had later hours. He wished to cater for that demand and hoped to sell Asian food which was lacking in the area and they were Halal only. He felt this was exceptional. He would take steps to prevent people gathering outside the premises and put up signage within, along with CCTV linked to a security firm. Once he realised he could not open late without a licence he stopped and had not done so since the police visit. He was not aware that he could approach both the police and the licensing authority for advice prior to submitting an application. He would be willing to accept less hours and put in place such measures as appropriate.
- 3.19 The panel had considered this application on its merits and had been mindful of the location of the premises in the CIZ which experiences high levels of crime and disorder. The panel agreed that the application was unsatisfactory in that no consideration was given to the location of the premises within the CIZ, and no clear conditions had been offered.
- 3.20 When questioned about the policy and exceptional circumstances, the responses given, though open and honest gave the impression that the applicant did not sufficiently understand the nature of the licensing regime or the importance of conditions and local policy. There was insufficient assurance given about how to manage potential incidents and (arising from the police visit) a lack of appreciation of the general risk to children and the need to protect them from harm in the night-time economy even without selling alcohol. The type of food to be sold or good management did not constitute exceptional circumstances to permit departure from the policy within the CIZ. The panel considers that the application as it stands would add to negative cumulative impact and undermine the licensing objectives and that the applicant had not rebutted that presumption or offered exceptional circumstances. The application was thus refused. The panel would recommend, following the lead from the police, that the applicant seek advice from both the police and licensing authority in any further application he may wish to submit. This was no guarantee of success but would ensure that the policy was properly addressed, and relevant conditions offered.
- 2.21 **RESOLVED** – That the new premises licence application under the licensing act 2003 on behalf of the Chicken Club, 72 Western Road, Brighton BN1 2HA be refused on the grounds set out above.

Note: The Legal Adviser to the Panel confirmed that the applicant would receive written notification of the Panel's decision and that the decision letter would include details of the appeal rights available to them.

The meeting concluded at 11.35am

Signed

Chair

Dated this

day of