

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

10.00am 19 JULY 2023

VIRTUAL

MINUTES

Present: Councillor ; Cattell, Czolak and Nann

Officers:

PART ONE

1 TO APPOINT A CHAIR FOR THE MEETING

1 To appoint a Chair for the Meeting

1.1 Councillor Cattell was appointed Chair for the meeting.

2 PROCEDURAL BUSINESS

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 were not excluded.

3 MONTEFIORE FOODS LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)**3 Montefiore Foods Licensing Panel (Licensing Act 2003 Functions)****In attendance**

For the premises Oisín Daly (Applicant's Agent)

Making representation Cllr Birgit Miller

Officer Presentation

- 3.1 The Licensing Officer summarised the details of the application, which was for the variation to a premises licence for Montefiore Food, 7 Montefiore Road, Hove. They advised that the application requested an additional hour of licensable activity from Monday to Sunday in line with policy and opening hours, a change of name to "The Sweet Shop" and changes to conditions 13, 14, 15 & 20 that appear in the Licensing Objectives at Appendix A of the agenda.

The Licensing Officer confirmed that 3 opposing representations and 3 supporting representations had been received for the application, advising that the opposing representations were from local residents and a local councillor and the supporting representations were from local residents. The representations received had concerns relating to Prevention of Crime and Disorder, Prevention of Public Nuisance, Public Safety, Protection of Children from Harm.

The Licensing Officer outlined the Matrix approach to licensing decisions, which provided a framework of what the licensing authority would like to see within its area and indicated the likelihood of success or otherwise to investors and businesses making applications.

The Licensing Officer advised that the premises did not fall within the Cumulative Impact Area and Special Stress Area and that off-licences out-with these areas were considered favourably until 23:00, though this may be earlier in a densely residential area. The Licensing Officer concluded by highlighting that the policy was not absolute and each application must be given individual consideration on its own merits.

Applicant's Agent Statement

- 3.2 The Mr Daly highlighted that in the proposed new Condition 14, the reference to 6.2% should have been to 6.5%. Further, he addressed the primary concerns raised, particularly in relation to the extension of licensable hours. Specifically, Mr Daly advised that the applicant had a year's worth of trading experience with no issues, referenced the section 182 guidelines on licensable hours matching opening hours and underpinned that the primary market was groceries, as indicated by the name change.

Mr Daly provided further details on the expansion of the floorspace and highlighted that there was no intention for the shop to become an off-license. Further, Mr Daly

proposed that, should the application be granted, an additional condition could be added to ensure any deliveries for alcohol were ancillary to a grocery shop of £5 or more. Mr Daly concluded by advising that engagement had been undertaken with the police and local authority around acceptable conditions.

- 3.3 Cllr Czolak raised concerns regarding the removal of the condition to sell miniatures.
- 3.4 Cllr Miller queried why the Police Community Support Officer for Goldsmid had given a contradictory report that there had been several incidents at the premises. Mr Daly requested that the hearing temporarily went into closed session as the response to the question contained sensitive information that was not in the public interest to be disclosed.
- 3.5 The meeting was briefly adjourned to allow Mr Daly to provide further details and seek legal advice from the Senior Lawyer.

Representations

- 3.6 Cllr Miller advised that resident's objected to the proposed extension of licensable hours given the residential nature of the neighbourhood, the premises being in close vicinity to a hospital, the conflicting conditions imposed on resident's above the premises, increased congregation of youths in the area and concerns around increasing noise and intimidation.
- 3.7 Cllr Nann highlighted that another off-license in the area was open until 11pm and queried why this particular change was objected by residents.
- 3.8 The chair queried if it was certain the youths were congregating outside this particular shop and asked if residents would have the same objections if the shop was managed better.
- 3.9 Cllr Nann clarified if the objections were just to the change in licensable hours.
- 3.10 Mr Daly queried if Cllr Miller had any direct experience of the alleged poor management, if she was aware of the previous history of vexatious representations and if the individuals she spoke with were linked to the other shop or to those who made representations at the first hearing.
- 3.11 The chair queried if the proposed additional condition around alcohol deliveries as an ancillary was a standard condition.
- 3.12 Cllr Nann asked if the applicant was committed to ensuring deliveries left the premises without disturbance.
- 3.13 The chair queried if deliveries would mainly be made bikes and electric bikes.

Officer Closing Observations

- 3.14 The Licensing Officer summarised the proposed conditions and measures that were discussed throughout the Panel. Further, highlighting that the Licensing Guidance

required members to consider the application with a view to promoting the licensing objectives in the overall interests of the local community. The Licensing Officer continued by advising that the local authority must give appropriate weight to the steps that are appropriate to promote the licensing objectives, the representations presented by all the parties, The Licensing Guidance and the Statement of Licensing Policy (SoLP). They also highlighted the importance of each application being given individual consideration on its own merits and outlined the possible decisions. Stating that, following the consideration of all the relevant issues, the licensing authority may grant the application subject to certain conditions and 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 this was appropriate for the promotion of the licensing objectives.

Objectors Closing Statement

- 3.15 Cllr Miller reiterated that the only element of the variation application to which herself and the local residents objected to was the additional licensing hour. Further, she echoed the reasons previously outlined and highlighted that the issues raised were stressful for residents and the tone of the area and neighbourhood being changed. Cllr Miller concluded by emphasising that residents were fine with the other requested variations, provided that the extension of the licensable hours was not granted.

Applicant's Agent Closing Statement

- 3.16 Mr Daly asked the Panel to consider three things when determining the decision of the application. Namely, the paragraph 10.15 of the section 182 guidance, the evidence in relation to the representation's made and the nature of the shop. They concluded that the applicant was aiming to expand their offer in line with the local policy.

Decision

- 3.17 The Panel read all the papers including the report and relevant representations, listened to all the submissions put forward at the hearing and had regard to the council's SoLP and the statutory guidance.

The application was for the variation of a premises licence granted in 2022. It sought one additional hour until 23.00 hours for the sale of alcohol for consumption off the premises, relaxation of various conditions which were set out in detail on page 27 of the published agenda and a change of name from Montefiore Foods to The Sweet Shop

The premises are situated outside both the Cumulative Impact Zone (CIZ) and Special Stress Area (SSA), so the application was determined on its own merits. A "matrix" approach to licensing decisions has been adopted by the council in its SoLP. It sets out a framework of what the licensing authority would like to see within its area and gives an indication of the likelihood of success to any applicant. For the purposes of the matrix, Montefiore Road falls within "other areas". The matrix provides a terminal hour of 11pm for off-licences in the "other areas", but this is qualified by note 7 which provides that in residential areas an earlier closing time may be appropriate.

3 representations opposing the application were received, along with 3 supporting representations. The objections raised concerns relating to all 4 licensing objectives.

One objector attended the hearing to amplify her objection. She helpfully clarified for the Panel that the only element of the variation application to which she objected was the additional hour for the sale of alcohol. The area was quiet and residential, with a hospital opposite. Youths tended to congregate outside the premises in the late evening. This was intimidating for residents. It was no longer the area they moved into. According to the PCSO for Goldsmid, there had been 2 police call outs in the last year. The premises were not well managed, in particular management failed to control outside noise, and this was likely to get worse with longer hours for the sale of alcohol.

In the applicant's absence, we heard from his agent. In his presentation, and in response to questions, we were told that the premises had traded without difficulty for a year, before submitting the application there had been prior engagement with the police and that the premises closed at 23.00 hours and paragraph 10.15 of the section 182 guidance provided that shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours. Although the objections did not raise concerns about deliveries of alcohol, a condition prohibiting the delivery of alcohol without a £5 minimum grocery order would be acceptable. The proposed increase in the floor area allowed for the display of alcohol was modest and the premises would still operate as a grocery store and the proposed name change was consistent with that use. It was a business decision to seek to expand the range of goods available, including miniatures. A condition requiring the same consideration for residents in the vicinity of the premises as for residents of premises in close proximity to the delivery address was reasonable and proportionate and would be acceptable. In the proposed new Condition 14, the reference to 6.2% should have been to 6.5% and that was consistent with the proposed replacements for Conditions 13 and 15.

The Panel noted that the proposed new trading hours were within policy and also noted that the premises were currently open until 23.00 hours even though alcohol sales ceased at 22.00 hours. Paragraph 10.15 of the section 182 guidance, to which the Panel were required to have regard, provided that shops should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there were good reasons, based on the licensing objectives, for restricting those hours. We are not satisfied on the evidence available to us that there are good reasons to restrict the hours for sale of alcohol for consumption off the premises to 22.00 hours. However, we do accept that deliveries may increase the risk of noise, so a condition requiring the premises licence holder to ensure that delivery drivers act responsibly when collecting goods for delivery is appropriate. We appreciated the applicant's suggestion of a condition requiring alcohol deliveries to be accompanied by a grocery order, to a minimum value of £5. The increase in the area of the shop from 15% to 20% given over to the display of alcohol is modest and will ensure that the premises cannot become a traditional off-licence.

In all the circumstances it is appropriate for the Panel to grant the variation application as applied for subject to the following: -

- i. Conditions consistent with the operating schedule, subject to the new condition 14 reading as follows:

No beers, lagers or ciders above 5.5% shall be sold at the premises save for craft or speciality beers which in any case shall not exceed 6.5%. Craft beers would include for example infused lagers, specially brewed or craft lagers with additional hops. Single cans of 440ml or less shall only be craft or speciality lagers.

- ii. Deliveries of alcohol must be accompanied by a grocery order with a minimum value of £5.00.
- iii. The licence holder shall ensure that delivery drivers collect orders from the premises in such a manner as not to cause a noise disturbance to the occupiers of residential premises surrounding 7 Montefiore Road. For the avoidance of doubt, this includes no slamming doors, no playing loud music, no shouting, no over-revving engines or sounding horns.

The Panel believes that the above conditions are appropriate for the promotion of the licensing objectives.

The meeting concluded at 11.05am

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Signed

Chair

Dated this

day of