

BRIGHTON & HOVE CITY COUNCIL

LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

10.00am 11 JANUARY 2024

VIRTUAL

DECISION LIST

Part One

4 DECISION LETTER

Licensing Act 2003 – Licensing Panel Hearing Notification of the Determination

Licensing panel hearing held via Teams on Thursday 11th January 2024 in respect of the application for a new premises licence in respect of premises known as SPM Local, 55A Lewes Road, Brighton, BN2 3HW.

The panel has considered the report of the Executive Director of Neighbourhoods, Communities and Housing with the relevant representations made. It has listened carefully to all the points and submissions made. In reaching its decision, it has had due regard to the Council's Statement of Licensing Policy (SOLP) and section 182 guidance.

The application is for a new premises licence, authorising the sale of alcohol off the premises every day, 08:00 to 23:00 hours. 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. Operators are 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.

Representations were received from Sussex Police, and the Licensing Authority. The representations raised the licensing objectives of the prevention of crime and disorder, prevention of public nuisance and the protection of children from harm and the location of the premises within the SSA. The Matrix approach to decision making within the SOLP is emphasised where off licences within the SSA are not supported unless the applicant can show exceptional circumstances.

The police highlight the challenging nature of the area and the relatively high

levels of crime and disorder in proximity to the premises. They stress that the Lewes Road is saturated with off licence premises with a total of 12 such premises along the road and which have a cumulative negative effect. They are concerned about underage sales as there have been failed test purchases from premises in the locality, and the proximity of the Level open space for consumption of alcohol and consequent anti-social behaviour. They maintain an additional premises selling alcohol and thereby increasing its availability will add to negative cumulative impact within the area.

Both the police and licensing authority point to the lack of reference by the applicant to the SOLP and failure to address or acknowledge the location of the premises within the SSA as the policy expects or show how their application will not add to the problems faced in the area. They contend that no exceptional circumstances have been demonstrated to justify departure from the Matrix. As guardians of the SOLP the licensing authority are thus concerned that the application is contrary to the policy. The police invite the panel to consider refusing the application but attach a set of conditions that they contend may mitigate risk if the panel were minded to grant the application.

The applicant's barrister addressed the panel. He pointed to the existence of a restaurant licence at the premises. In terms of anti-social behaviour and the SSA he quoted the S182 Guidance at 14.13 which states that licensing is not the primary mechanism for control once an individual is away from licensed premises but is a key aspect of such control. His client had lots of relevant experience and was a personal licence holder. He maintained that this premises was not an off-licence (which was not, he believed, defined in our policy) but a general convenience store which thus fell outside the Matrix categories. His client was willing to adhere to all the conditions put forward by the police. These included no single cans, membership of the Business Crime Reduction Partnership and no high strength beer or lager save for premium products. It was contended that these conditions represented all that his client could do to mitigate the risk and were supported by the police and that the licence should thus be granted.

The panel has carefully considered this application on its merits and in light of the concerns raised by the Responsible Authorities and submissions on behalf of the applicant. The panel is clear that this premises is an off- licence under the SOLP. It will be a shop selling alcohol for consumption off the premises. Such premises are described at 3.5 of the SOLP under the heading Off Licences. They are a 'no' in the SSA under the Matrix unless exceptional circumstances can be shown. The panel shares the concerns raised by the police in relation to this application. This is a challenging area already saturated with off-licences. The levels of crime and anti-social behaviour are significant, and it was established that there were also people especially vulnerable to alcohol harm in the area. Although it was stated he was an experienced operator, the applicant did not address the nature of the area or the SOLP in making their application. The panel considers this shows a lack of understanding of the area and SSA policy. The fact that there is an existing restaurant licence at this premises does not have any benefit in the context of this application which is for a different type of premises which carries more risk.

The panel has considered whether there are any exceptional circumstances to justify departure from the SOLP. This premises intends to sell alcohol for consumption off the premises. It is an off licence and a convenience store. Our policy recognises this and states at 3.5.1 that retail outlets where the provision of fresh produce is the principal product sold maybe considered more favourably. However, the panel can see nothing exceptional or distinctive about the offer here alongside alcohol to set it apart from others or make it exceptional to justify departure from the Matrix. It will be a further premises selling alcohol for consumption off the premises and is likely in our opinion, echoing that of the police, to add to the problems of crime and disorder and anti-social behaviour in the area and thus undermine the licensing objectives. The panel has taken into consideration the conditions put forward by the police as their fall-back position and which are accepted by the applicant. Ultimately while many are best practice under the policy and as such may reduce some risk, the panel considers that they will not be effective in preventing problems from occurring by the addition of a further off-licence in this challenging area and as already stated, the panel does not consider that exceptional circumstances have been shown in this case. The grant of this application is likely to add to existing problems and is therefore refused.

The minutes of the panel will be available on the Council's website under the rubric 'Council and Democracy'.

Appeal Rights

(Section 181 and schedule 5, paragraph 1 of the Licensing Act 2003)

The applicant may appeal against the decision to refuse the licence.

All appeals must be made to Magistrates' Court, Edward Street, Brighton, within 21 days of deemed delivery of this letter. Delivery will be deemed to have been effected on the second working day after posting. A fee is payable upon lodging an appeal.

a) FIELD_TITLE