

BRIGHTON & HOVE CITY COUNCIL

LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

10.00am 4 JANUARY 2024

VIRTUAL

DECISION LIST

Part One

3 NOWHERE MAN CAFÉ LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

Contact Officer: Corinne Hardcastle *Tel:* 0127329
Ward Affected: Regency

Licensing Panel hearing held on Thursday 4 January 2024 virtually in respect of the application for a premises licence for Nowhere Man Café, 53 Upper North Street, Brighton BN1 3FH

The panel has read all the papers including the report and relevant representations and listened to the submissions put forward at the hearing. The panel has also had regard to the council's Statement of Licensing Policy (SOLP) and the section 182 statutory guidance.

The original application was for a new premises licence, authorising the supply of alcohol for consumption on and off the premises between the hours of 09.00 and 23.00. However, the applicant company, Nowhere Man Limited, subsequently amended the application to cease the sale of alcohol at 22.00 hours, and to remove off sales entirely. Additional conditions addressing public nuisance concerns were also offered, and are set out on pages 53 – 55 of the Panel's agenda. As a result of the amendments, both the Police and Local Authority representations were withdrawn. We have therefore restricted our consideration to the application as amended.

The premises are situated outside the Cumulative Impact Zone (CIZ) but within the Special Stress Area (SSA). This area is deemed to be of an area of special concern in terms of the levels of crime, disorder and public nuisance experienced within them. 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. The matrix provides a terminal hour of 10pm for cafés within the SSA. The SOLP provides that the matrix will be strictly adhered

to, although each application will be considered on its own merits. Departure from the matrix will only be considered in exceptional circumstances.

7 representations were received objecting to the application. They raised concerns relating to Prevention of Crime and Disorder, Public Safety and Prevention of Public Nuisance. 2 supporting representations were also received.

At the hearing, we heard from 4 of the objectors. They expanded upon their objections, highlighting concerns about use of the external outside area for smoking, noise emanating from the premises, and noise in the street from patrons smoking and queueing.

In answer to resident concerns about the lack of consultation, the licensing officer confirmed that the application had been properly advertised in accordance with the statutory requirements.

We heard from the *sole director of the applicant company, and their solicitor.*

In their presentation, and in answer to the questions we were told that:

- *The applicant company and/or director had run the premises for 9 years. It was acknowledged that some early events at the premises had caused problems for residents, but there had been no complaints for the last 6 years, even when events had been held using Temporary Event Notices. (TENS).*
- *The application to sell alcohol was intended to build on the success of the existing business.*
- *Prior to submission of the application, there had been consultation with Environmental Protection, which was reflected in the Operating Schedule.*
- *Following the consultation period, there had been substantial engagement with the Responsible Authorities. As a result, the application was amended to remove off sales, and to change the hours for sale of alcohol from 23.00 to 22.00 hours. The removal of off sales and 22.00 hours closing meant that the application fell within the Matrix.*
- *There had also been post-consultation engagement with residents, as evidenced by the company's letter dated 1 December 2023. As a result of resident representations, the application had been finessed, and the applicant had now agreed to close the external area at 17.00 daily – 3 hours earlier than the 20.00 hours agreed with Environmental Protection. It would therefore not be available for smokers after that time.*
- *An extensive suite of conditions dealing with the Prevention of Crime and Disorder and the Protection of Children from Harm had been agreed with the Police. General Conditions about waiter/waitress service, consumption of alcohol only by persons sitting at table, and the availability of substantial food at all times would ensure that the premises retained their character as a café, and could not become a pub.*

The Council's SOLP is supportive of entrepreneurial activity (para 1.7.1) and our

decision needs to balance the rights of residents to peaceful enjoyment of their property and the needs of business. The Panel welcomes the applicant's active engagement with the Responsible Authorities and local residents, and the submission of an amended application, compatible with the Matrix. Closure of the external area at 17.00 hours addresses many of the residents' concerns about noise. Whilst noise was an issue a number of years ago, we are satisfied that this is no longer the case, as evidenced by Representation G on page 48 of the agenda. We also believe that the "Prevention of Public Nuisance" conditions provide further reassurance for residents.

We are therefore granting the application subject to the attached comprehensive conditions circulated in advance of the hearing to all the parties. We have noted that should problems arise at the premises, residents will have more enforcement options open to them than would be the case if no licence were in force.

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

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 of the Licensing Act 2003)

The applicant may appeal against the decision to impose conditions on the licence.

Any person who made a relevant representation who desires to contend that the licence ought not to have been granted, or that on granting the licence, the licensing authority ought to have imposed different or additional conditions, may appeal against the decision.

All appeals must be made to Magistrates' Court, Edward Street, Brighton, within 21 days of notification of this decision letter. A fee is payable upon lodging an appeal.

