

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

10.00am 25 JANUARY 2024

VIRTUAL
MINUTES

Present: Councillor ; Lyons, Nann and Hewitt

Officers: Emily Fountain (Senior Licensing Officer), Rebecca Sidell (Legal Adviser), Grace Leonard (Democratic Services Officer),

PART ONE

1 TO APPOINT A CHAIR FOR THE MEETING

1 To appoint a Chair for the Meeting

1.1 Councillor Hewitt 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 be not excluded from the meeting during consideration of any item on the agenda.

3 THE MONA LISA LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

3 The MONA LISA 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 an Application for a Variation of a Premises Licence under the Licensing Act 2003 in respect of the Mona Lisa, 89 St James's Street, Brighton, BN2 1TP. Permission was sought to add alcohol for on sales only to their current licence.

Officer Presentation

3.2 The Senior Licensing Officer, Emily Fountain 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, Public Safety and Cumulative Impact.

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 Hannah Staplehurst who spoke in respect of the representation which had been received from Sussex Police.

3.5 The Police have identified the area in which St James's Street is situated in a Problem Profile. The premises is located in the Queen's Park Ward within the CIZ which was ranked worst out of 21 wards for A&E attendances with a record of alcohol, second worst for Criminal Damage and higher risk drinking, and third worst for all injury violence, all violence against the person, non-injury assault, Police recorded alcohol incidents, and sexual offences. 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.

3.6 The Police had further concern with the application being for a split license and the potential confusion that could arise from this type of license and the risks associated with this, particularly around the difficulty managing the premises. The concern for this type of license

was furthered by a history of the premises breaching their current license. It was explained that there was an incident of breaching the current license on 1 January 2024 where it was reported the premises was operating past opening hours. 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.

3.7 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, or BCRP.

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

Representation - Licensing Authority

3.9 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.

3.10 Historically there was another breach over Pride in 2022 when the premises was open and carrying out unauthorised licensable activities as they had not transferred the premises licence. The premises licence was also suspended due to the annual fees not being paid. The applicant was aware of this; however, they continued to operate without a valid premises licence. Furthermore, On Sunday, 1 January 2024, Sussex Police visited the premises and witnessed them trading past midnight. Breaching the current premises licence.

3.11 The Licensing Authority considered that the previous breaches of premises license constituted a lack of confidence in the applicant to comply with conditions in the application and that the application should therefore be refused.

Applicant's Submission

3.12 The applicant, Mr Cem Ince was not in attendance to speak in support of his application. Ms Deyra Teke, the agent acting on behalf of the applicant, gave a representation in support. It was explained that the owner had consulted with both the Licensing Authority and Sussex Police. They are aware of the objections and conditions applied.

3.13 The agent went on to state that the applicant was aware that of the concerns from the Police and Licensing Authority regarding the sale of alcohol on St James's Street. They stated that the alcohol would be for on sales only and not be on display, therefore only visible to those who wish to be seated in the restaurant. They made clear that the alcohol would not be sold off the premises or part of the takeaway service the premises operates. The sale of alcohol would end when the restaurant closed each day and the split license would not be a concern as there would be no visible alcohol to anyone not seated in the restaurant. It was also stated that the application was designed to elevate trade to the business and applicant was willing to take on board changes and conditions to the application.

3.14 The Panel asked detailed questions of the agent in order to clarify and confirm the manner in which it was intended that the business would operate around its limited space and staff, as well as the visibility of both the outside and inside seating area. The Police and Licensing Authority representative were also given the opportunity to ask and to respond to questions by the applicants.

Closing Submissions

3.15 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.

3.16 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, and 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

3.17 The Chair, Councillor Hewitt 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.

3.18 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.

3.19 This application is for a split license to add alcohol to the existing late-night refreshment from 12:00 hours to 00:00 hours every day. The decision-making Matrix within the Statement of licensing policy indicates a 'No' to late night refreshments 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 on the 1st January 2023 during New Year's and found they were open past licensed hours. When they were made aware the premises closed. There was also a breach during Pride 2022 when the premises was found to be operating without transferring the license or paying annual fees. The police were concerned about the location of the premises in the CIZ St James's Street in an area which has a Problem Profile and high levels of crime and disorder. Split license venues can cause people confusion in the area where they may be intoxicated and hinder effective dispersal. This would add to problems in the area. Although there was a supporting statement from the applicant's agent no mention was made of any exceptional circumstances to allow departure from the policy. Conditions offered were limited and did not address the policy concerns. Both responsible authorities recommended refusal of the licence. After hearing the presentation from the applicant's representation, 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, they should pre-consult with the police to see what advice they could offer.

3.20 The applicant's representation had explained that the previous breaches of premises license were raised throughout the process. The incident over Pride 2022 was a misunderstanding of the conditions and once they were told to complete the transfer of the license and pay the annual fees they did. The breach on 1 January 2024 was explained as being 15 minutes over closing for a special customer and the condition of properly trained staff will prevent incidents in the future and help stay within policy. The agent also made clear the applicant would be willing to accept conditions placed on the application as appropriate.

3.21 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.

3.22 When questioned about the policy and exceptional circumstances, the responses given, though open and honest, were not from the applicant who was not present. There was insufficient assurance given about how to manage potential incidents and a lack of confidence in the ability of the applicant to not breach policy. The split license application and history of 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 therefore refused. The panel would recommend the applicant address concerns represented at the panel and 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.

3.23 **RESOLVED** – That the new premises licence application under the licensing act 2003 on behalf of the Mona Lisa, 89 St James's Street, Brighton BN2 1TP 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 Time Not Specified

The meeting concluded at Time Not Specified

Signed

Chair

Dated this

day of