

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

2.00pm 22 DECEMBER 2010

COMMITTEE ROOM 1, HOVE TOWN HALL

MINUTES

Present: Councillors ; Lepper (Chairman), Hawkes and Simson

Officers: Jim Whitelegg, Senior Environmental Health Officer, Mark Savage-Brookes, Licensing Officer, Rebecca Sidell, Lawyer and Penny Jennings, Democratic Services Officer

PART ONE

91. TO APPOINT A CHAIRMAN FOR THE MEETING

91.1 Councillor Lepper was appointed Chairman for the meeting.

92. PROCEDURAL BUSINESS

92a Declarations of Substitutes

92.1 There were none.

92b Declarations of Interest

92.2 There were none.

92c Exclusion of the Press and Public

92.3 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 any 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 100(1) of the Act).

92.4 **RESOLVED** – That the press and public be not excluded.

93. 10 GREEN BOTTLES, 9 JUBILEE STREET: APPLICATION TO VARY EXISTING PREMISES LICENCE

- 93.1 The Panel considered a report of the Head of Environmental Health and Licensing regarding an application for a variation of a Premises Licence under the Licensing Act 2003 in respect of "Ten Green Bottles", 9 Jubilee Street, Brighton.
- 93.2 The applicant was present and was represented by Mr Simmonds who spoke in favour of the application. Mrs Crowhurst was present and spoke on behalf of the North Laine Community Association which represented local residents. It was noted that Councillor Deane who had also made representations in relation to the application had sent notification that she was unable to attend that afternoon's meeting.
- 93.3 Mr Whitelegg, Senior Environmental Health Officer outlined the application confirming that the applicants had agreed with the Police to reduce their opening hours and that the premises would close at 23.00 seven days a week on that basis. Accordingly, the Police had withdrawn their representations subject to the reduction in hours being added to the new licence. Representations had also been received from the North Laine Community Association and Councillor Deane one of the Local Ward Councillors. If granted the variation would contravene the current planning permission which permitted the premises to remain open until 10.00pm. However, the planning status of the application was not relevant to the Panel's considerations and amendments to the existing planning permission would need to be applied for by the applicant separately should a variation to the current licence be granted. The premises was located in the Special Stress Area (SSA) and details of measures to be included for consideration in SSAs were set out in Appendix E to the report.
- 93.4 Councillor Simson enquired whether the existing café bar conditions would remain in place if a variation of the licence was granted and it was confirmed that they would.
- 93.5 Mrs Crowhurst enquired whether the premises would be able to operate to its full opening hours in the absence of an extant planning permission to the same hour. The Chairman, Councillor Lepper explained that matter did not fall within the remit of the Licensing Committee/Panel and would need to be addressed separately with the planning department. Mr Simmonds stated that the applicant had thought that the planning permission enabled the premises to close at 11.00pm. This matter would be checked up on with the planning department and if there was any disparity the applicant would address that as a matter of urgency.
- 93.6 Mrs Crowhurst confirmed that the premises were well run and that no problems were currently experienced, but that the Community Association were anxious that the premises continued to be responsibly run and that they did not stay open beyond 11.00pm.
- 93.7 Mr Simmonds spoke on behalf of the applicant in support of their application. He confirmed that the premises would not remain open beyond 11.00pm as agreed with the Police and that the applicant would continue to ensure that proper winding down arrangements were in place to ensure that patrons left quietly and did not cause noise nuisance on leaving the premises. The applicant would continue to promote good operating practices and would ensure that regular staff training/re-training would take place and that door supervisory staff would be present at weekends.

- 93.8 None of the parties had any further questions and Mr Whitelegg, Senior Environmental Health Officer gave his closing submission on behalf of the Licensing Authority. He stated that the Panel needed to determine whether the applicant had demonstrated that the proposed variation to the licence would not impact negatively on the Special Stress Area in which it was located.
- 93.9 The Panel were in agreement that on the basis of the submissions they had received they were happy to grant the variation in the terms requested.
- 93.10 **RESOLVED** – That the variation to the Premises Licence of Ten Green Bottles 9 Jubilee Street, Brighton to extend the hours for all licensable activities be granted until 11.00pm every evening. To include live music as a licensable activity used on occasions.

94. JADE CHINESE RESTAURANT, 29 WESTERN ROAD : APPLICATION TO VARY EXISTING PREMISES LICENCE

- 94.1 The Panel considered a report of the Head of Environmental Health and Licensing relating to the application received to vary a Premises Licence under the Licensing Act 2003 for Jade Restaurant at 29 Western Road, Hove.
- 94.2 Mr Cowell was in attendance to make representations against the application on behalf of the East Brunswick Residents Association. Mr Bodroghy was present to make representations against the application as a local resident and Councillor Elgood was present to make representations against the application on behalf of both Local Ward Councillors. Mr Wong was in attendance and spoke on behalf of the applicant in support of their application.
- 94.3 Mr Savage-Brookes, Licensing Officer detailed the application stating the application sought to extend the hours of licensable activities and opening hours from 2.00am to 5.00am every day. He explained that the premises was located within the Special Stress Area(SSA), an area deemed as of special concern in terms of levels of crime, disorder and public nuisance experienced within them. He reported that twenty one representations had been received from local residents, residents associations, both local ward councillors and the Police. It was noted that the Police had no objections to the application provided the premises was to continue to operate primarily as a restaurant subject to the imposition of appropriate conditions to actively promote the four licensing objectives subject to additional new conditions being added to the licence as out in their letter included with the agenda papers. As these had been forwarded to the applicants but no formal response had been received either agreeing to them or commenting upon them by the deadline date for representations a formal representation had been submitted.
- 94.4 Mr Savage-Brookes also referred to a late submission received from Mrs Juliet Hunting who had made representations but had been unable to attend due to the timing of the meeting being re-scheduled. The Panel considered that in fairness to all parties it would be inappropriate to consider this late information.
- 94.5 Mr Savage-Brookes stated that the ground floor of the premises operated as a dedicated restaurant and it was understood that the extension of hours and the supply

of alcohol was aimed mainly at the downstairs licensed area which operated principally as a karaoke bar. It was understood that the current hours of operation were at variance with those permitted by the extant planning permission, irrespective of whether or not a variation was granted. However, this matter was captured by separate legislation and would need to be dealt with separately from the licence application.

- 94.6 Mr Cowell made representations on behalf of the East Brunswick Residents Association stating that their main concerns related not to noise emanating from the premises itself but from noise disturbance very late at night as patrons left the premises and walked through the neighbouring residential streets. There were a number of licensed premises in the area which already gave rise to nuisance and disturbance for residents, any intensification of the current use would be likely to exacerbate these existing problems.
- 94.7 Mr Bodroghy stated that an increased availability of alcohol in extent or time would encourage drunkenness which would lead to increased anti-social and rowdy behaviour that affects public safety and could also expose vulnerable children to binge drinking.
- 94.8 The Chairman, Councillor Lepper, asked whether given that Mr Bodroghy lived some distance from the application site, he actually experienced disturbance as a direct result of the operation of this premises. Mr Bodroghy stated that he had not but that his concerns in relation to noise and other nuisance in relation to any premises closing at such a late hour remained.
- 94.9 Councillor Elgood spoke on behalf of both local ward councillors objecting to the proposal stating that if the premises were to remain open until such a late hour this would result in an unacceptable negative impact in a residential area. If live music was to be performed it would have an adverse impact on neighbouring homes, especially to the rear which were situated very close to the venue. There were also concerns that if approval was given it would result in a proliferation of similar requests from other premises in the vicinity.
- 94.10 Mr Wong gave a submission on behalf of the applicant stating that the extension was requested in order to enable customers to use the karaoke facility in the basement after they had had a meal in the restaurant above. In answer to questions by the Chairman Councillor Lepper which sought to establish which elements of the premises the request for a variation related to, Mr Wong confirmed that it was sought for the premises in its entirety. It was also explained that access/egress would be through the restaurant above. The restaurant could cater for up to 70 covers and that 15 customers could use the basement for Karaoke at any one time. The basement area would not be open until 5.00am every evening and this facility would be available for customers to stay on after they had finished a meal. The karaoke facility needed to be booked prior to midnight and alcohol would not be available to anyone who had not purchased a meal. Further clarification was sought and it emerged that the facilities available at the premises were licensed until 11.30pm and that the premises were operating in infringement of their existing conditions at present. Also, that what was being requested did not relate to what was envisaged in terms of the manner in which the premises would operate.
- 94.11 In the light of this information a short adjournment of the meeting took place in order for legal advice to be sought. Following the brief adjournment the Chairman stated that the

application would be determined that afternoon and all parties had the opportunity to ask questions prior to closing submissions being made.

- 94.12 Mr Cowell asked regarding facilities available for smokers and it was explained that they would need to use the pavement outside the premises at Western Road. The doors would be locked at midnight and customers were let in and out of the premises by a member of staff.
- 94.13 Councillor Simson asked what time the premises were open until now and it was confirmed that they were open until 200am. The licensing officer stated that this was in contravention of the current licence although it was clear that the applicants had been unaware that was the case.
- 94.14 Mr Savage-Brookes the Licensing Officer gave closing submissions on behalf of the Licensing Authority stating that as the current licensing conditions, in relation to hours of operation had not been complied with albeit unwittingly granting of a variation would undermine the licensing objectives of prevention of crime and disorder.
- 94.15 Mr Cowell gave his closing submission stating that the potential nuisance to residents arising from additional noise nuisance as a result of patrons smoking outside the premises or leaving late at night should be borne in mind. Mr Bodroghy made no further comments.
- 94.16 Councillor Elgood reiterated his earlier comments stressing that he considered that if open until such a late hour this use could be detrimental to local residents in terms of late night noise and other nuisance.
- 94.17 Mr Wong stated that there was nothing further which the applicant wished to add in support of their application.
- 94.18 The Chairman stated that having given careful consideration to the application the Panel did not feel they could grant the application for a variation to the existing licence. They had heard from the applicants that they intended to permit karaoke in the basement of the premises without the provision of a late night refreshment licence. The Panel considered that extending the hours of licensable activities to 5.00am could lead to compromising the licensing objectives in relation to the prevention of public nuisance and had therefore decided to refuse this application.
- 94.19 **RESOLVED** – (1) That the application to vary the licence in respect of Jade Restaurant, 29 Western Road, Hove be refused for the reasons set out in Paragraph 94.18 above.
- (2) Additionally, the Panel recommended that the applicant sought legal advice in relation to conditions on the current licence and premises licence conditions before making any further applications.

Note : The Legal Adviser to the Panel reminded the applicants of their appeal rights to the Magistrates Court under the Licensing Act and that appeals must be made within 21 days of written notification of the decision given at the hearing.

The meeting concluded at 3.55pm

Signed

Chairman

Dated this

day of