

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

**10.00am 5 AUGUST 2011**

**COMMITTEE ROOM 1, BRIGHTON TOWN HALL**

**MINUTES**

**Present:** Councillors Simson (Chair) ; Duncan and Marsh

**Officers:** Jean Cranford, Licensing Manager; Liz Woodley, Senior Lawyer and Penny Jennings, Democratic Services Officer

**PART ONE**

**54. TO APPOINT A CHAIRMAN FOR THE MEETING**

54.1 Councillor Simson was appointed Chairman for the meeting.

**55. PROCEDURAL BUSINESS**

**55a Declaration of Substitutes**

55.1 There were none.

**55b Declarations of Interest**

55.2 There were none.

**55c Exclusion of the Press and Public**

55.3 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).

55.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of any item on the agenda.

**56. APPLICATION FOR NEW PREMISES LICENCE:THE COURTYARD,20 NEW ROAD, BRIGHTON**

- 56.1 The Panel considered a report of the Head of Planning and Public Protection requesting that they determine an application for a new premises licence in relation to "The Courtyard" 20 New Road, Brighton.
- 56.2 Inspector Apps was in attendance on behalf of the Police. Mr Day was in attendance as an interested party to speak to his letter of objection and to speak in support of the objections raised by the Police. Mr and Mrs Sutherland were in attendance as directors of the applicant company. They were accompanied by Mr Simmonds who spoke on their behalf.
- 56.3 Mrs Cranford, Licensing Manager explained that the premises fell within the Cumulative Impact Area. In this area the licensing authority after giving this matter careful consideration had determined that the concentration of licensed premises within a small area of the city centre were causing problems of crime and disorder and that therefore an approach to Cumulative Impact was necessary as part of the licensing policy. Within this area there was a presumption that applications would be refused although consideration would be given to the individual circumstances of each application and whether there were exceptional circumstances to justify departure from the special policy in the light of the individual circumstances of the case, If an application was unlikely to add to the Cumulative Impact area it might be granted.
- 56.4 The Licensing Manager went on to explain that the special policy would only be overridden in exceptional circumstances. This presumption could be rebutted by the applicant if they could show that their application would have no negative Cumulative Impact. Two representations had been received in respect of the application although it was understood that following further discussions with the applicant the Police now considered the application acceptable.
- 56.5 Inspector Apps stated that he was in attendance that morning to confirm that following further discussions with and concessions the Police considered that the application was acceptable. As this decision had been made less than 24 hours prior to the meeting he had attended the meeting in person to convey this information to the Panel.
- 56.6 All three Panel Members sought clarification in relation to this matter, given that the Police had expressed strong opposition to the application in their letter dated 8 July 1, notwithstanding that the applicants had agreed to meet various conditions including that there would be no "off sales" from the premises, on sales only would be permitted.
- 56.7 Inspector Apps enumerated the conditions agreed to by the applicant, but Councillor Simson, the Chair sought further clarification as she could not see that the applicants had agreed to any conditions than those already offered. Inspector Apps stated that the applicants had agreed to change the hour at which use of their outside area would cease to 22.00 each day. Following further questions it was established that this was the only change that had been made to the application as originally submitted. Inspector Apps also made reference to a decision which had been notified to the Police the previous week which had also impacted on their current view.

- 56.8 Councillor Duncan sought clarification in relation to use of the outside area asking whether this use could be licensed separately from the inside area and also in relation to the size and dimensions of this area.
- 56.9 Councillor Simson, the Chair referred to the imposing of café bar conditions and sought confirmation regarding how they could operate in practice. It was her understanding that substantial food needed to be available at all times, but that customers could consume alcohol without purchasing food to accompany it, albeit that alcohol was only served to customers seated at tables.
- 56.10 Mr Day sought confirmation regarding off-sales from the premises and use of the outside area. Miss Woodley explained the position in relation to licensing legislation in this respect.
- 56.11 Mr Day then made his submission in respect of the application and expressed his extreme annoyance at the manner in which this matter had been handled by the Police. He had attended that morning in order to support their representations. Had he known the situation he would not have wasted time in attending that morning. In his view the CIA had been imposed for very good reasons. New Road suffered from anti social behaviour and street drinkers on the benches. He had reported a large number of incidents of anti-social behaviour. He did not consider that any case had been made to depart from the special policy.
- 56.12 Councillor Simson, the Chair stated that the purpose of the meeting was for the Panel to consider all relevant representations and to make their decision having had the opportunity to seek further clarification on any matter as appropriate.
- 56.13 Mr Day stated that he had little to add except that to he considered that the existing policy should be upheld and that the application should be refused. He asked Inspector Apps why the Police now considered the application was acceptable and Inspector Apps stated that he would be happy to discuss the matter further with Mr Day outside the meeting.
- 56.14 Mr Simmonds then gave his submission on behalf of the applicant. He enquired of Mr Day whether he himself had an interest in premises in the CIA. Mr Day stated that he had an interest in "The Colonnade" bar located next to the Theatre Royal, which served an exclusively over 18 clientele and had an established track record which was trouble free. He had an interest in a number of licensed premises in the city including a recently opened tea rooms in New Road at which no alcohol was served.
- 56.15 Mr Simmonds went on to explain that the premises for licence was being sought was a family friendly restaurant which had been trading for six months without giving rise to any problems or concerns. The premises was family friendly and made a positive contribution to the area and would not by virtue of the nature of its operation and clientele be attractive to street drinkers who congregated in New Road. The applicants were seeking to attend their hours of operation to cater for family parties, who had for instance attended performances at the Theatre Royal and wished to have a meal together before making their way.

- 56.16 Councillor Marsh enquired as to the time the premises were currently open until and whether or not there was an existing licence to sell alcohol. Mr Simmonds confirmed that the premises currently closed at 21.00 and that they did not have a licence to sell alcohol. In answer to further questions it was explained that although the premises sometimes opened at 9.00am they usually opened at 10.30am and it was not proposed that alcohol would be sold earlier than 10.00am.
- 56.17 Councillor Marsh also sought clarification in relation to areas for on and off-sales and in relation to the area used as a sitting out area with tables and chairs. It was established that this latter area required a separate licence from the highways authority. Further clarification was sought as to the precise area which would be covered by the licence. Reference was also made to a disabled bay which was located in close proximity to the premises but which did not appear on the submitted plans.
- 56.18 Councillor Duncan referred to the premises location in the heart of the CIA. The Statement of Licensing Policy required applicants to ensure that no negative impact would arise as a result of their operation. He enquired how the applicant would ensure that was the case in the event that the licence was granted. Mr Simmonds responded that the fact that café bar conditions would be applied would complement the character and ambience of the premises which had already been established. Alcohol would only be provided to those seated at tables by waiter/waitress service.
- 56.19 Councillor Simson, the Chair enquired regarding the type of food available and the capacity of the premises. Mr Simmonds explained that the maximum capacity of the premises was 50 and that although lighter snacks were available throughout the day and into the evening substantial food would be available at all times. Councillor Simson referred to the nature of New Road later into the evening enquiring whether that would be attractive to families. Mr Simmonds stated that the applicants wished to stay open until a modest hour and considered that their offer would meet a need identified by their customers.
- 56.20 There were no further questions and the Licensing Manager therefore made a closing statement on behalf of the licensing authority. Reference was made to the premises location within the Cumulative Impact Area and to the presumption that licence applications would be refused in that area unless a compelling case had been made by the applicants for departure from policy by illustrating as a result of them illustrating that there no negative impact would arise. If the Panel considered that to be the case then it would be appropriate for a licence to be granted.
- 56.21 The Panel were reminded that if they were minded to grant the licence that any conditions to be applied to it should be enforceable and proportionate.
- 56.22 Inspector Apps made the closing submission on behalf of the Police stating that in view of the fact that the applicant had agreed to the conditions set out and to curtail their hours of operation by half an hour, the Police were satisfied that the application was acceptable.
- 56.23 Mr Day stated that he was appalled by the Police's change of stance in relation to this application. He had attended that day in order support their objections and felt he had wasted his time and she have been made aware of this change in position. In his view

the policy meant that applications in CIA were usually refused. He did not feel that any case had been made for an exception to be made and considered that the process was flawed.

- 56.24 Councillor Simson, the Chair stated that the decision lay with the Panel and that the purpose of the meeting was for them to hear and consider all representations made to enable them to do so.
- 56.25 Mr Simmonds gave the closing submission on behalf of the applicants, referring to the fact that the premises had agreed to meet a number of conditions including the imposition of café bar conditions, this indicated the character of the establishment and indicated that it was not and did not intend to operate as a vertical drinking establishment.
- 56.26 The Chair stated that the Panel had read the submitted paper work in depth, had listened very carefully to all of the submissions made and had given considerable thought to them in arriving at their decision. Whilst there was no doubt that the premises were well run, they were, nonetheless, situated in the heart of the Cumulative Impact Area, where the number of licensed premises was acknowledged as having reached saturation point. The Panel were mindful of the concerns set out in the original letter of representation received from the Police.
- 56.27 The effect of adopting a special policy of this kind was to create a rebuttable presumption that applications for new premises licenses that were likely to add to the existing cumulative impact area would normally be refused, following relevant representations, unless the applicant could demonstrate in their operating schedule that there would be no negative cumulative impact on one or more of the licensing objectives.
- 56.28 The Panel did not consider that the applicants had taken steps which showed there would be no negative cumulative impact. Notwithstanding subsequent discussions with the Police, the Panel considered that they had failed to demonstrate the measures proposed were such to rebut a presumption of refusal or made a sufficiently compelling case to make an exception of the Council's established policy in relation to the Cumulative Impact Area as set out in the Statement of Licensing Policy. The grant of a new premises licence to these premises would provide a further venue supplying alcohol, within an area so sufficiently heavily populated with licensed premises that crime, disorder and public nuisance had reached problem levels.
- 56.29 Contrary to the Secretary of State's Guidance, the applicants had failed to demonstrate in their operating schedule that there would be no negative cumulative impact on one or more of the licensing objectives. The applicant had made no reference to cumulative impact whatsoever and there was therefore nothing in the application or the operating schedule to rebut refusal or to provide a reason for departure from the special policy. The Panel had therefore decided to refuse the application.
- 56.30 **RESOLVED** – That the application for a new premises licence under the Licensing Act 2003 for the Courtyard, 20 New Road, Brighton be refused for the reasons set out above.

**Note :** The Legal Adviser to the Panel confirmed explained that the applicants would receive notification of the decision in writing. Details of their appeal rights would be included.

The meeting concluded at 11.35am

Signed

Chairman

Dated this

day of