

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

10.00am 12 JULY 2012

COMMITTEE ROOM 1, BRIGHTON TOWN HALL

MINUTES

Present: Councillor ; Duncan, Deane and Simson

Officers:

PART ONE

20. TO APPOINT A CHAIRMAN FOR THE MEETING

20.1 Councillor Duncan was appointed Chairman for the meeting.

21. PROCEDURAL BUSINESS

21a Declaration of Substitutes

21.1 Councillor Deane was present in substitution for Councillor Hyde.

21b Declarations of Interest

21.2 There were none.

22c Exclusion of the Press and Public

22.3 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).

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

22. BAR SYNERGY LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

22.1 The Panel considered a report of the Head of Regulatory Services for an application for a variation of a premises licence for Bar Synergy, 1 Middle Street, Brighton. In

attendance were Inspector Apps and Peter Savill from the Police; Alun Cance from Brighton & Hove City Council Environmental Protection; Paul Eastman a local business owner; Councillor Jason Kitcat in his capacity as the local Ward Councillor and Robert Feld and Joshua Feld the owner and general manager of the premises.

Introduction from Licensing Officer

- 22.2 The Licensing Officer, Sarah-Jane McNaught, provided an overview of the application and stated it was for a variation to an existing premises licence. The applicant was seeking to extend the current hours for the supply of alcohol to 05.00 Wednesday to Saturday for sale by retail of alcohol. The applicant also wanted to remove condition 10 from Annex 3 to allow alcohol to be served in glass from 18.00 to 00.00 each day. Six representations had been received against the application, and these representations had concerns in relation to Public Nuisance, Public Safety, Crime and Disorder and Cumulative Impact. The premises were within the cumulative impact zone. The Statement of Licensing Policy states that applications for variations that are likely to add to the existing cumulative impact will be refused following relevant representations. This presumption of refusal can be rebutted by the applicant if they can show that their application will have no negative cumulative impact on licensing objectives including prevention of crime and disorder and public nuisance. Furthermore, this special 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 the Area, it may be granted.
- 22.3 It was highlighted that the premises had previously operated as Entourage which had a 24 hour licence. A review was applied for in 2009 by Environmental Protection on grounds of prevention of public nuisance. Residents and Sussex Police also made representations. The Panel then changed the licensable activities so that alcohol, regulated entertainment, and late night refreshments could only be until 03.00m with opening hours at 03.30. Since then there had been 3 changes of Premises Licence Holder and a variation to extend hours in October 2010. The extension was not granted. The current premises Licence Holder transferred the Licence in May 2011 and the premises actually opened in September 2011 which the current Licensable activities and conditions. Since then the Licensing Team have issued a warning for breach of premises licence with the door being open. There was also a change of DPS following an incident of crime at the premises with the previous DPS, Mr Joshua Feld in January 2012.
- 22.4 Environmental Protection had received complaints of which the Environmental Protection Officer would discuss in his representation. The Statement of Licensing Policy states *regards will be had likelihood of nuisance to residents of the neighbourhood with regards to "types" of residencies/neighbourhoods. The Licensing Authority has adopted a matrix approach to licensing decisions. Whilst each application will always be considered on its merits, as an indication North Laines area will be considered residential neighbourhoods and East Street is a mixed neighbourhood.*
- 22.5 In response to queries the following matters were confirmed: the current DPS was the one named on the licence; there was a missing sentence on the public representation

on pages 37-38; a representation in support of the application from the freeholder was included in the agenda paper, and the second paragraph on page 42 should be disregarded as it had been included in error.

Representation by Responsible Authorities

- 22.6 The Chair invited the Officer from Environmental Health to set out his representation, and it was stated the concern related largely to public nuisance and noise at the premises from amplified music, smokers and customers leaving the premises. Due to the impractical nature of the keeping the main doors to the premises shut it was difficult to set appropriate noise levels; at 05.00. the background noise in the area would drop considerably, and the level would need to be set to reflect this. There had been 19 complaints about noise in relation to the premises since 2009; however, only one of these complaints had been since the current management had taken over operations in September 2011. The complaint was about audible music from a nearby bedroom from behind a closed window. Finally it was noted that the premises was in the Cumulative Impact Zone (CIZ) and operators were expected to pay special attention to noise impact, and it was felt this was not currently being done.
- 22.7 In response to queries from the Panel it was clarified that there was no further information available on the complaint as the Case Officer was away on long term absence, and it was felt that any conditions to address noise would be too difficult to enforce.
- 22.8 The applicant was then able to confirm that the complaint had related to an oversight of the previous manager who had left the doors to the premises open in error, and the premises had a small smoking area to the rear.
- 22.9 The Chair invited the Police to set out their representations, and it was stated that the Police objection related to cumulative impact which would occur in this area regardless of how well run a premises might be, and the Council's Statement of Licensing Policy specifically stated that well run premises should not depart from the presumption to refuse such applications in the CIZ. The responsibility to prove that the variation of the licence would not increase issues in relation to cumulative impact sat with the applicant, and applications should be refused unless an exception could be proved. It was considered that the extension of hours to 05.00 would add to cumulative impact in the area. In relation to the removal of the condition about plastic drinking vessels it was the Police position that the condition should remain as it stood as there had been no recorded incidents of 'glassing' since the imposition of the condition.
- 22.10 In response to questions from the Panel it was confirmed that Operation Marble operated on Fridays and Saturdays from 18.00 to 04.00.
- 22.11 In response to questions from Councillor Simson the Police explained that issues in relation to drinking on Thursday nights in the city centre were becoming increasingly problematic. When there had been historic problems with 'glassing' it was normal practise for the Police to seek to impose conditions that restricted the use of glasses, and the applicant noted that not all licensed premises in the immediate vicinity had this condition.

Representation by Interested Parties

- 22.12 The Chair invited Mr Eastman to set out his representation, and he stated he had owned and operated the guest house across the road from the premises for over 10 years, and all other bars in the area closed at 3 a.m. which he considered to be an acceptable time. The main problem he, and guests, experienced was noise, and in the last year Mr Eastman had had to refund approximately £1000 to guests due to noise complaints. He went on to note that the refunds had only related to nights when the premises had applied for an extension to its normal operational hours through a Temporary Events Notice (TEN).
- 22.13 The Panel enquired about the nature of the noise and Mr Eastman explained that it was usually noise from customers outside the premises, when the noise was from music he could go and speak to the premises directly to address this problem.
- 22.14 The Chair invited Councillor Jason Kitcat to set out his representation as the Local Ward Councillor, and he noted the street had historically had problems in relation to licensed premises, and he considered that an extension of hours to 05.00 was too late as Operation Marble finished at 04.00 whilst he sympathised with the needs of the business there was duty to look at the wider impact of the proposed variation to the licence, and granting the application would be in opposition to Council policy. Councillor Jason Kitcat concluded by noting that the applicants had failed to address concerns about cumulative impact.
- 22.15 In response to a query from Councillor Deane it was highlighted that Middle Street was narrow and this increased the noise problems.

Representation by the Applicant

- 22.16 The Chair invited Robert Feld to set out his representation and Mr Feld stated that he was an investor in the business and not responsible for the day to day running. He requested that a detailed pack of information be submitted to the Panel for their consideration; however, due to the amount of information and late submission the request was refused. Mr Feld went on to reference nearby premises that had licences for activities after 04.00 and argued that the application was not seeking an unreasonable extension to the hours of operation. Since Mr Feld had taken over the lease the premises had undergone a refit and steps were being taken to make the premises more 'upmarket'. The premises was very small, with a capacity of 110 for both the ground floor and upstairs areas, and consequently it had been difficult for the current operators to make the business viable. The premises also needed a proportionately high number of door staff, and this usually exceeded the number requested on the licence.
- 22.17 The premises currently opened Wednesdays to Saturdays 4 nights week, but there was little business on Wednesday and Thursday, and the application to vary the current hours were to make the business more viable. Mr Feld explained that he had held discussion with the Police before submitting the application to vary the licence and the Police had said they would consider an extension of hours until 05.00, and the use of glass until midnight. Mr Feld went on to explain that the variation would not add to cumulative impact in the area as the business was seeking to increase its share of customers; rather than attract additional customers. In relation to Mr Eastman's

representation it was stated that it could not be proved that the noise complaints related to customers from the premises as there were others nearby. It was hoped the noise from the premises could be better managed with a new air-conditioning system that would remove the need for the windows to be opened, and smokers were directed to use the smoking area to the rear. In conclusion Mr Feld stated that the application was modest in nature.

- 22.18 Councillor Deane highlighted the changes to the Council's Statement of Licensing Policy in December 2011 in relation to cumulative impact and saturation, and in response Mr Feld stated that the application was to increase the viability of the business, and he did not believe the application could 'cause such a difference' to the local area.
- 22.19 Councillor Simson asked for further information on the smoking area and it was explained that the capacity was for 10 people, and it was managed by a single doorman at the rear; there had been no complaints in relation to noise from this area. Anyone who left the premises at the front to smoke was asked to use the rear area after 22.00, and it was confirmed that the smoking area was part of the premises. The doorman who controlled the area was positioned such that they could also watch the overall floor space on the ground floor.
- 22.20 It was clarified that TENs were currently being used on pay weekends, for opening hours until 06.00, when there was increased trade, and during these times additional doorstaff were employed. It was also noted that the premises did not promote low priced drinks offers. When the current operators had taken over the business they were aware of the historic problems, and had been particularly aware of problems in relation to drug misuse in the basement bar and a decision had been made to close this area permanently as it was very small and difficult to supervise. It was their intention to work to 'upmarket' the premises to remove any stigma attached from the historic problems.
- 22.21 In response to questions from Environmental Health the applicant explained that the capacity of the ground floor and first floor area was 110, and this did not include the basement, the capacity of the smoking area was 10. The premises had a consistent team of doorstaff who were employed through a recommended company; DJs were employed on Fridays and Saturdays and the front door of the premises was closed after 23.00.
- 22.22 In response to queries from the Police it was confirmed that there was sign on the premises that advertised 'Jaggerbombs' for £1.50, and the applicant considered this to be an acceptable price. The Police also highlighted that a member of the doorstaff team had been arrested the previous weekend; the applicant rebutted this by stating that the member of staff had not been charged, and the Chair highlighted to all parties that this point was not relevant to the considered of the application.
- 22.23 Councillor Kitcat asked the applicant to confirm their position in relation to cumulative impact, and it was clarified that the applicant did not believe they would add to cumulative impact as they would be drawing additional customers from the existing customer base on any given night.

22.24 In response to additional questions from the Panel it was confirmed: the premises were trying to build a marketing list and the applicant would be willing to accept to use of glass until 23.00.

Summaries

22.25 The Licensing Officer noted that the Panel had listened to representations that had discussed the extension of hours and concern of public nuisance, crime and disorder and cumulative impact. Removal of the condition in relation to polycarbonates and concern of public safety had also been referenced. The applicant had stated that the business model is different to the past and discussed what he felt was cumulative impact. Reference was made to sections 9.25 & 13.18 of the Licensing Guidance and section 3.2 of the Statement of Licensing Policy.

22.26 The Panel should consider whether the variation was likely to add to the existing Cumulative impact and/or had the applicant demonstrated that their application would not have a negative impact? If the applicant had demonstrated that it would not impact then the Panel should consider granting the application, and any conditions to meet Licensing Objectives and to control cumulative impact should be clear, precise and enforceable. If the Panel believe the variation would add to the existing Cumulative Impact and the applicant had failed to demonstrate how they would counteract that negative impact then the Panel should consider refusal. If Panel decided to refuse, it would need to demonstrate that granting would undermine a Licensing Objective and conditions would be ineffective in preventing problems.

22.27 The Officer from Environmental Protection explained that it would be difficult to control smokers at the front of the premises by condition.

22.28 The Police asked the Panel to disregard the information relating to the hours operated by other premises in the area as this did not set a precedent and the cumulative impact should be applied to new and variation applications. It was also highlighted that matters in relation to the viability of the business should not form part of the consideration of the Panel.

22.29 Mr Eastman reiterated his first hand experience of the problems at the premises.

22.30 Councillor Jason Kitcat noted that the business was small in size, but highlighted that the Panel should not give consideration of matters in relation to the viability of the business. He also expressed his concern for the neighbours.

22.31 The Panel retired to make their decision.

22.32 **RESOLVED** - The Panel had read all the papers and listened carefully to all the submissions made. The premises was situated in the Cumulative Impact Zone, and the Council's Licensing Policy says that variations to premises licences which are likely to add to the existing cumulative impact will be refused following relevant representations. This policy can only be overridden in exceptional circumstances.

The Panel heard relevant representations citing the prevention of crime and disorder and public nuisance and considered whether there were any exceptional circumstances

which applied here. The Panel considered the size of the premises and the proposed schedule of operation, but did not believe either of these presented such exceptional circumstances.

The Panel was not of the view that the applicant had demonstrated there would be no negative cumulative impact; indeed everything the Panel had read and heard during the hearing suggested that the application would add to the problems of public nuisance and disorder in the area – thus undermining the Licensing Objectives.

The Panel had also taken into consideration the observations of Sussex Police in relation to the contribution to public safety and the prevention of crime of the existing licence condition requiring the use of poly-carbonate drinking vessels. Whilst the Panel was sympathetic to the business advantages of being able to serve cocktails in glass drinking vessels the Panel did not consider this was a sufficient reason to vary the existing condition which, it was felt, promoted the Licensing Objectives in relation to public safety and the prevention of crime and disorder.

The Panel therefore refused the application.

The meeting concluded at 12.35pm

Signed

Chairman

Dated this

day of