

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

**10.00am 4 SEPTEMBER 2012**

**COMMITTEE ROOM 2, BRIGHTON TOWN HALL**

**MINUTES**

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

**Officers:** Jim Whitelegg, Licensing Manager, Rebecca Sidell, Lawyer and Caroline De Marco, Democratic Services Officer.

**PART ONE**

**40. TO APPOINT A CHAIR FOR THE MEETING**

40.1 Councillor Duncan was appointed Chair for the meeting.

**41. PROCEDURAL BUSINESS**

**41a Declaration of Substitutes**

41.1 There were none.

**41b Declarations of Interest**

41.2 There were none.

**41.c Exclusion of the Press and Public**

41.3 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).

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

**42. THE MARWOOD CAFE - 52 SHIP STREET, BRIGHTON**

- 42.1 The Panel considered a report of the Head of Regulatory Services regarding an application for a premises licence under the Licensing Act 2003 for the Marwood Café, 52 Ship Street, Brighton.
- 42.2 The applicant, Richard Grills attended the meeting with his representative Philip Samarakis to speak in favour of the application. Alex Evans and Curtis James attended to support the application and Dave Day and James Wilson attended to speak against the application.
- 42.3 The Licensing Officer summarised the application as set out in the agenda. Two objections had been received from local businesses on the grounds of all four licensing objectives and cumulative impact. The Environmental Protection Team had come to an agreement with the applicant and added conditions set out on page 35 of the agenda. The applicant had met with Sussex Police and had agreed to amended conditions. There were therefore no representations from the responsible authorities.
- 42.4 The Licensing Officer reported that 20 emails of support were received within the consultation period and were originally deemed invalid as representations. However, the legal representative for the applicant had asked for a review of the decision. Following a review, 10 emails were considered valid as the objections related to the licensing objectives. The other 10 emails were circulated as supporting evidence.
- 42.5 The Licensing Officer reported that a number of conditions were set out in the operating schedule in Appendix A of the agenda. This included a condition that substantial food should be available at all times. The application was in the Cumulative Impact Area where applications would normally be refused after relevant representations. This presumption of refusal could be rebutted by the applicant if they could show that their application would have no negative cumulative impact on the licensing objectives. The special policy was not absolute. Upon receipt of a relevant representation, the licensing authority would always consider the circumstances of each case and whether there were exceptional circumstances to justify departing from its special policy in the light of the individual circumstances of the case. If an application was unlikely to add to the Cumulative Impact of the Area, it may be granted. The Licensing Officer drew attention to page 8 of the agenda which set out the matrix approach to licensing decisions.
- 42.6 The Licensing Officer stated that the applicant had submitted photographs of the rear court yard and the inside of the premises. He asked if there were any objections to the photographs being circulated. The photographs were circulated with the agreement of all parties.
- 42.7 Councillor Simson asked if there was any history of problems at the premises and whether they currently had a late night licence. The Licensing Officer replied that there was no current licence. An application was made in 2010 for regulated entertainment, late night refreshment and an alcohol licence. There were representations from Mr Day and Sussex Police and the Panel refused the application. The current application was similar to the previous application but had reduced hours. There had been a lack of clarification in 2010 about which area needed to be licensed. It was now clear that it was the ground floor area.

- 42.8 Councillor Simson asked if the premises would be a café bar and whether the applicant wanted to sell alcohol outside the premises. She also asked if the police conditions had been included in the operating schedule (appendix A). The Licensing Officer replied that substantial food would be available but there had been no mention of waiter/waitress service. Off sales would enable alcohol to be served in the courtyard area. The police conditions were included in the operating schedule. The only additional conditions were the ones agreed with Environmental Health (page 35 of the agenda).
- 42.9 Councillor Simson referred to the letters of support and asked how many supporters lived in the vicinity. The Licensing Officer replied that the majority were from local businesses and customers.
- 42.10 Councillor Simson asked if the police had suggested any conditions relating to glass receptacles and bottles being taken outside. The Licensing Officer confirmed that they had not suggested such conditions.
- 42.11 Councillor Marsh asked if the applicants needed to apply for an off licence as well as an on licence for the rear courtyard. The Licensing Officer replied that the courtyard was not part of the premises. It was public highway land. He had spoken to the Highway Manager who had stated that in the past this piece of land had been used as a toilet and drug den. It was the view of highway officers that provided the area was kept well maintained, they were happy to grant a table and chairs licence.
- 42.12 Councillor Marsh asked if it was possible to place conditions on the outside areas with regards to smoking, use of glass etc. The Licensing Officer explained that the tables and chairs licence could have conditions attached. Highway officers would consult licensing officers regarding this matter.
- 42.13 Councillor Marsh asked if the 10 emails of support not deemed “valid” could be given the same weight as the 10 valid emails. The Licensing Officer stated that sufficient weight should be given to the ones that were valid. The other emails were submitted for information.
- 42.14 Councillor Marsh asked if customers could buy alcohol in the bar for off consumption. The Licensing Officer confirmed that this could only happen in the designated area. The Panel Solicitor referred to the operating schedule on page 20.
- 42.15 Councillor Simson asked if the Panel approved a premises licence for the area marked in red on the submitted plan, whether it meant the applicant could sell alcohol in the outside area. She noted that all outside areas were to be used for licensing activities. She asked how that would be interpreted. The Licensing Officer replied that the applicant would be licensed within the red line on the plan. However, if the applicants set up a bar in the courtyard area, they would be required to apply for a variation.
- 42.16 James Wilson presented his representation as set out on page 32 of the agenda. Mr Wilson stated that he leased the property next door to the premises. The access to Café Coho was on the right hand side down a shared lane. The manager of Café Coho lived in a first floor flat above the premises. The issue of concern was alcohol fuelled noise and nuisance. The smoking policy was ineffective with no regard to the residential

property. After 10.00pm the smokers would move to the front area in front of Café Coho. This could create a threatening atmosphere.

- 42.17 Mr Wilson stated that to have people on his doorstep was unacceptable. He noted that when the previous application was considered it had been stated that people would not be sent to the front area as it would cause trouble. There would be a likelihood of nuisance and disturbance. Mr Wilson said he had a duty to look after the person residing in the property. The current tenant had children who visited. The next resident might also have children.
- 42.18 Mr Wilson stated that an 11.30pm late night refreshment licence would be unacceptable. He asked how late night music would be controlled.
- 42.19 Councillor Marsh asked Mr Wilson to explain where the entrance to Café Coho was situated. She also asked Mr Wilson to confirm his hours of operating the café. Mr Wilson replied that the entrance to Café Coho was down the alley way. He had a licence to midnight but currently operated between 8.00am to 8pm. He had an outside area to the front of the Café.
- 42.20 Councillor Simson asked if there was currently a problem of noise. Mr Wilson replied that there was noise but that it did not only come from next door. The noise was at an acceptable level. He did not want it to become worse. People currently smoked at the back of the property.
- 42.21 Mr Samarakis asked Mr Wilson if his staff used the Marwood Café. Mr Wilson replied that they did. Mr Samarakis asked if there had been any complaints from his resident concerning people smoking outside. Mr Wilson replied that there had been no complaints yet. However, he was not prepared to accept any more noise.
- 42.22 Dave Day presented his representation as set out on page 31 of the agenda. He asked for a summary of the original application in 2010. The Chair pointed out that Mr Day had a summary of this application. Mr Day stated that the original application was relevant because it was refused. Mr Day stated that he was objecting on the grounds that the premises was in the Cumulative Impact Area. The application had been refused before, and nothing was different from that application with the exception of the reduction of hours. Mr Day was annoyed that he had not seen the papers until the meeting and that he did not know who would be participating in the meeting. He was concerned that the police had decided not to support the CIA policy.
- 42.23 Mr Day stated that he had no axe to grind with individuals. However this was a new premises in the middle of the Laines. He was disappointed that the police were prepared to see the premise licensed, against the CIA policy. He was disappointed that they could not support the CIA more seriously. This would lead to more applications in the area. Mr Day stated that he was attending the Panel to support the CIA.
- 42.24 Councillor Marsh pointed out that Mr Day had not referred to entertainment in his representation. Mr Day stated that he did not think it was a suitable property for that part of the business. The premises was down an alleyway and was very small. It was not a suitable premises to hold a licence and was not in the right area.

- 42.25 Mr Samarakis asked Mr Day if he felt it was his duty to uphold the CIA. Mr Day replied that he was supporting the council and the police on the CIA policy.
- 42.26 Mr Samarakis pointed out that Mr Day had not objected to Mr Wilson's application for a licence. Mr Day replied that he had not known about it. He had no idea Café Coho was to be licensed. It was a good, well run business but if he had known about the application he would have objected on the grounds that it was in the CIA.
- 42.27 Mr Samarakis asked Mr Day whether he had any objections to Café Coho now it was up and running. Mr Day replied he did not because it was mainly trading as a café and not a music venue.
- 42.28 Curtis James set out his representation in support of the application as stated in his email of 24 July 2012, which had been circulated to the Panel before the meeting. Mr James stated that he was a town centre resident who owned a business in Brighton. He had a 13 year old child. Mr James stressed that he would not have supported the application if he felt that alcohol would change the character of the premises. He felt that there was a lack of good places which served coffee in the evening. The Marwood Café would not be a place where people got drunk, and the grant of a premises licence would not change the character of the premises. Mr James explained that the Marwood Café was used for events and he had always had professional dealings with staff. The grant of a licence would not cause any negative impact in the area.
- 42.29 Councillor Simson asked Mr James if the Marwood Café was a venue he would be happy to take his 13 year old son. Adding alcohol to the licence would introduce children to alcohol earlier. Mr James replied that hiding children from alcohol would not protect them. He would not be concerned to take his son to the premises due to his knowledge of people who frequented the Marwood Café.
- 42.30 Councillor Marsh asked if Mr James was concerned that visitors to Brighton might not know that the Marwood Café was known for its reputation for good coffee. Mr James replied that the access was down an alleyway. The café was not marketed for hen and stag nights.
- 42.31 Mr Wilson asked Mr James if he would still have the same opinion if he lived above Café Coho. Mr James replied that he would not choose to live there, as there would already be noise in that area.
- 42.32 Councillor Simson pointed out that there was a large A board outside the premises advertising it. Mr James replied that the board did not advertise cheap beer.
- 42.33 Alex Evans set out his representation in support of the application as stated in his email of 24 July 2012, which had been circulated to the Panel before the meeting. Mr Evans stated that the current application was different from the previous application. A kitchen had been installed and substantial food was on offer, along side the potential of having alcohol. Coffee and sandwiches had been available in the past. The premises was now operating more like a restaurant/café bar. The venue held small events and had a good atmosphere with coffee on offer. The clientele were all very friendly and Richard Grills was an upstanding citizen. He had previous experience of venues with alcohol.

- 42.34 Councillor Simson asked Mr Evans if he was aware that the Panel's decision was not based on whether the premises was well run or not. Mr Evans stressed that employing good staff would cut down on potential disorder.
- 42.35 Councillor Simson asked Mr Evans to explain a reference to door staff. Mr Evans explained that Mr Grills had decided to employ door staff for a wedding for public safety reasons. They had been very friendly individuals and there had been no disharmony.
- 42.36 Councillor Simson asked Mr Evans about a reference he had made that the licence would bring more people into the area. She asked if he was aware that the Cumulative impact policy was about minimising the numbers of people who were around the premises. Mr Evans replied that the business itself could attract more people into the café by operating a food and drinks policy.
- 42.37 Mr Samarakis set out the case for the applicant. He explained that he had been in touch with the police before the application was submitted. The police had asked for the draft operating schedule and had discussed the terminal hour. The police had referred Mr Samarakis to the policy and decision matrix and stated that they would support applications where the licensable activities ceased at 11.00pm. As a result they had decided not to make a representation. The same approach was adopted by Environmental Health officers.
- 42.38 Mr Samarakis informed the Panel that the application was consistent with the council's policy as stated in paragraph 2.69 (page 7 of the agenda). The application was for the ground floor. The courtyard was not to be licensed. No alcohol would be sold in the yard and there would be no licensable activities in the courtyard. The only licensable activities would be in the premises.
- 42.39 Mr Samarakis reported on an amendment to the submitted plan. The area marked with a triangle in red on the left hand top of the plan would not be licensed. This was part of the external court yard area.
- 42.40 Mr Samarakis stated that Mr Grills had worked in this country and abroad and was familiar with the requirement of the CIA. He had operated the Marwood Café for about 4 years. The council wanted diversity in the city and a better example of a diverse premises could not be found. The Terrence Higgins Trust, Fabrica, and the LGBT community used the café regularly. They would be horrified if hen or stag parties were to use the premises.
- 42.41 Mr Samarakis explained that the venue sold excellent coffee and regularly showed films by production companies. The venue also had fringe comedy and board games such as Scrabble. It was not a high street pub. The application was about providing an additional service to people using the premises already. There was a new kitchen and substantial food was on offer. The applicant wanted to offer select English wines and coffee liquors. The premises was already trading until 11.00pm and people already smoked in the courtyard and outside the front of the premises.
- 42.42 Mr Grills informed the Panel that the alcohol on sale would be of a high quality. He wanted to have live music and concentrate on festivals, comedy and lectures. The

venue had been used by many groups and used for a variety of activities including life drawing. It had also been used as a fringe office.

- 42.43 Councillor Marsh asked the applicant why he wanted to change the venue and if the application was granted how he would filter out people on the street that he would not want as clients such as hen and stag parties. Mr Grills replied that he wanted to add to the venue. He had fantastic staff and he had a great deal of experience of managing venues. He did not allow big groups in the venue.
- 42.44 Councillor Marsh asked if the applicant would consider accepting a condition stating that no high strength alcohol such as beers or lagers would be sold. Mr Samarakis replied that they would consider the wording of such a condition.
- 42.45 Councillor Marsh noted that there were tables and chairs in the courtyard. She asked if it was proposed to serve alcohol without food. Mr Samarakis explained that food would be served at all times. The yard had a capacity for 30 and was set out for people to be seated.
- 42.46 Councillor Marsh asked why there was an application for late night refreshment. Mr Samarakis replied that the application was for alcohol to be sold to 11.00pm. The late night refreshment licence was required to sell hot non alcoholic drinks between 11.00 to 11.30pm
- 42.47 Councillor Simson asked if the applicants had considered that the application might lead to negative changes in the venue. Mr Samarakis replied that the applicant believed that the proposals would not have any negative impact.
- 42.48 Councillor Simson asked if the applicant had met with all the people making representations. The applicant confirmed he had not.
- 42.49 Councillor Simson asked the applicant if he thought that the licence would bring more people into the area for a longer period, therefore adding to cumulative impact. Mr Grills stressed that the venue was already open until 11.00pm. He did not necessary think the licence would add to the numbers of customers but it would offer more to existing customers. The difference would be that the customers were more likely to stay at The Marwood rather than move on to another licensed venue.
- 42.50 Councillor Simson asked the applicant to give details about the alcohol offer. Mr Grills explained he wanted to provide beer, wine and spirits. He would try and use local products. He tried to use specialist coffees and wanted to have the same approach to alcohol.
- 42.51 Councillor Simson asked if the police had canvassed the idea of full café bar conditions. Mr Grills replied that he had discussed closing times with the police who had not suggested café bar conditions as the application was to apply for a licence until 11.00pm. The police had referred to the matrix approach to licensing decisions. A small pub would be fine.
- 42.52 Councillor Simson asked if the venue would be a small pub. Mr Samarakis replied that it would not be a pub. The venue would provide food. It would be a café bar. Full café

bar conditions would require waiter/waitress service. This was not felt necessary. The police were happy with the application.

- 42.53 Councillor Simson asked whether there had been discussions with the police about the use of glass receptacles. Mr Samarakis replied that the police had not requested this. Staff inside and outside the premises would be checking for noise and ensuring that glasses were not taken from the premises.
- 42.54 Councillor Simson asked if people could buy bottles of wine and take them to the outside area. Mr Samarakis explained that wine was corked by staff. Non alcohol drink was sold in glass bottles.
- 42.55 The Chair referred to security. The operating schedule referred to mobile security. He asked if the applicant would be prepared to have permanent security. Mr Grills stated that if there were special events he would arrange for security. However as a rule, he did not anticipate the venue experiencing any trouble.
- 42.56 The Chair asked if there would be live music. Mr Grills stated that he planned to have more theatre than live music. Mr Samarakis stated that if there was any amplified music the Environmental Health Officer had stated that doors and windows should be kept shut. Live music would not happen regularly.
- 42.57 Councillor Simson asked for details about covers. It was confirmed that there were 24 covers.
- 42.58 Councillor Marsh asked if vertical drinking would take place in the venue. Mr Samarakis replied that there would mostly be seating. However, when there during events, there were occasions where people would stand. There would usually be tables and chairs.
- 42.59 Mr Samarakis explained that when events were held furniture would be removed and 40 people could stand.
- 42.60 Councillor Simson asked about a large A board that advertised the premises. She asked if it was the intention to use an A Board to advertise alcohol. The applicant replied that this was not the intention.
- 42.61 Mr Wilson asked what would happen if the current applicant sold the business in the future. Would the new owner take on the previous licence? Mr Samarakis explained that the licence could be conditioned to state that the nature and style of operation would remain the same. The Panel Lawyer emphasised that the wording of conditions would need to be precise and enforceable. Mr Samarakis replied that the condition would state that the premises was trading primarily as a café bar.
- 42.62 Councillor Simson informed Mr Samarakis that the council's interpretation of café bar conditions would state that there would be waiter/waitress service for people seated at tables. Mr Samarakis replied that that would usually be the case. He was not asking for an ordinary pub licence. He was happy to have a condition attached.



- 42.63 Mr Wilson asked about the difference between live music and recorded music. The Licensing Manager stated that live music was live and recorded music was a recording on a CD or ipod.
- 42.64 Mr Wilson asked what the council's policy about different types of live music. The Licensing Manager stated that if live music was granted it would be granted without limitations. The Chair stated that conditions could be attached to the licence.
- 42.65 Mr Wilson stated that he had been under the impression that it was to be a seated venue. He asked if there was a proposal to only serve alcohol with food. Mr Samarakis confirmed that there was no such proposal.
- 42.66 Mr Wilson asked for clarification regarding smoking outside the premises. Mr Samarakis explained that condition 4 of the conditions (agreed with Environmental Health) stated that smoking would be allowed in the courtyard until 10.00pm when the courtyard would be closed. Tables and chairs would be removed from outside areas at 10.00pm.
- 42.67 Mr Wilson asked how noise would be controlled outside his resident's property. The access was down an alleyway. His manager lived in the flat above his premises at the moment. Mr Wilson was concerned what would happen if the lease was transferred.
- 42.68 Mr Samarakis stressed that the premises was already open until 11.00pm and smokers already stood outside the front of the premises.
- 42.69 Mr Day asked questions relating to the planning permission. It was stressed that licensing operated under a separate regime. However even if a licence was approved, the applicants would not be able to operate the licence without relevant planning permission.
- 42.70 The Licensing Officer gave his closing observations and summarised the application. He stated that events had been held at the café since June 2011. A number of Temporary Event Notices had been granted for the sale of alcohol and late night refreshment. There had been no complaints. The proposal was for the sale of alcohol and all licensable activities to take place between the hours of 10.00am and 11.00pm. Late night refreshment was proposed between 11.00pm and 11.30pm. The courtyard and outside areas to be closed at 10.00pm. No alcohol to be served for consumption beyond the premises and designated outside areas. The Operating Schedule had been changed following consultation with the police.
- 42.71 The Panel were reminded of licensing guidance and the Matrix set out in paragraph 2.7.1 of the council's Statement of Licensing Policy. The application should be considered on its own merits. The application was in the Cumulative Impact Area where there was a presumption of refusal for new premises licenses following representations. However this presumption could be rebutted by the applicant if they could show that their application would have no negative Cumulative impact.
- 42.72 Mr Wilson set out his closing observations. He stated that the application in its current format would make the venue like a club or bar. He did appreciate the venue would benefit from selling alcohol but he considered it would undermine the licensing

objectives. If alcohol was only served to people seated at tables and the smoking policy was reconsidered then there might be a case for a licence to be approved in the future

- 42.73 Mr Day set out his closing observations. He objected on grounds that the application was in the CIA and would lead to more noise and nuisance in the area. The premises was an excellent coffee bar and it should stay that way.
- 42.74 Mr James set out his closing observations. He stressed that he would not have supported the application if he felt that the grant of a licence would lead to any negative issues.
- 42.75 Mr Evans concurred with Mr James. He stressed that the application was diverse and community minded.
- 42.76 Mr Samarakis set out his closing observations on behalf of the applicant. He stressed that the council's licensing policy had been changed to include the Matrix set out in paragraph 2.7.1. This stated that it was acceptable for a licence to be granted to a pub in the CIA up to 11.00pm. Each application had to be considered on its own merits.
- 42.77 The Police had no objections to the application and it had been agreed not to apply for a licence beyond 11.00pm. Food would be available at all times. Vessels would not be taken away from the premises. Mr Samarakis was happy for a condition to be imposed restricting high strength alcohol apart from coffee liquors. He was also happy to condition the way alcohol was delivered to customers. There would occasionally be events which would require the removal of tables and chairs. A café bar condition could be applied. The people supporting the application did not feel the grant of a licence would change the business.
- 42.78 **RESOLVED** - This application is situated in the Cumulative Impact Area. The Council's policy at paragraph 2.6.5 says that applications for new premises licenses which are likely to add to the existing cumulative impact will be refused following relevant representations. This presumption can be rebutted by the applicant if they can show that their application will have no negative cumulative impact. This special policy will only be overridden in exceptional circumstances.

The Panel have considered the individual circumstances of this application. The Panel have heard about the style and characteristics of these premises and that the applicant considers that these will not add to problems of cumulative impact in this area.

However, the Panel do not consider that this applicant has demonstrated there will be no negative cumulative impact. The Panel do believe that granting this application is likely to add to problems in the area. Despite the characteristics and style of operation, granting this licence will mean that there will be more people consuming alcohol in an already saturated area. This is very likely to add to problems of public nuisance and crime and disorder in the area. The Panel have considered what conditions might be effective in preventing problems including those offered by the applicant and those suggested by the responsible authorities, but don't feel these would be sufficient to prevent problems of cumulative impact.

Whilst the Panel appreciate that this application would appear to satisfy some aspects of the council's policy, in the Matrix, for example, the Panel consider that the overriding concern and basis for this special policy is the availability of additional alcohol outlets in the Cumulative Impact Area and the problems this generates.

The Panel therefore believe that granting this application would undermine the licensing objectives of prevention of crime and disorder, prevention of public nuisance and the protection of children from harm.

The Panel therefore refuse this application.

The Panel solicitor reminded the parties 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 meeting.

The meeting concluded at 1.25pm

Signed

Chairman

Dated this

day of