

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

**10.00am 3 SEPTEMBER 2015**

**COMMITTEE ROOM 1, BRIGHTON TOWN HALL**

**MINUTES**

**Present:** Councillor Marsh (Chair); O'Quinn and Wares

**Officers:**

**PART ONE**

**21 TO APPOINT A CHAIR FOR THE MEETING**

21.1 Councillor Marsh was appointed Chair for the meeting.

**22 PROCEDURAL BUSINESS**

**22a Declaration of Substitutes**

22.1 There were none.

**22b Declarations of Interest**

22.2 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 are not excluded from the meeting.

**23 NEW PREMISES LICENCE APPLICATION, PUREZZA, 12 ST JAMES' STREET, BRIGHTON**

23.1 The Panel considered a report of the Director of Public Health in relation to an application for a new premises licence under the Licensing Act 2003 for Purezza, 12 St

James's Street, Brighton. In attendance were Tim Barclay and Stefania Evangelista co-owners/ applicants. Roger Rolfe and Dr Janie Thomas attended to object to the application.

### **Introduction from the Licensing Officer**

- 23.2 The Licensing Officer, introduced the application and stated that the application was for the sale of alcohol inside the café every day from 8am to 11pm. The proposed opening hours were also 8am to 11pm. The premises was in the Cumulative Impact Zone. There were 8 representations from local residents and a Resident's Association. The representations expressed concerns relating to Prevention of Crime & Disorder, Cumulative Impact and Prevention of Public Nuisance. A representation from Mr & Mrs Scoble referred to an enclosed copy of B&HCC's Queen's Park Crime and Disorder Data plus Health data. This had been missed from the agenda in error but had been circulated to the Panel Members before the meeting. The Council did not have access to the Police statistics referred to in the letter of objection. A representation had been received from Sussex Police but had been withdrawn following the agreement of conditions. These were set out in the letter from Sussex Police on pages 30 to 33 of the agenda.
- 23.3 The application fitted within the decision making matrix set out on page 6 of the agenda. There were no objections from the Local Authority or Environmental Health. The premises was situated in the CIZ. The Special Policy for CI states that applications which are likely to add to the existing cumulative impact will be refused following relevant representations. This presumption of refusal could be rebutted by the applicant if they can show that their application will have no negative cumulative impact on licensing objectives. This 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. If an application is unlikely to add to the Cumulative Impact of the Area, it may be granted.
- 23.4 The Panel were also aware of the Matrix approach to licensing decisions found within the Statement of Licensing Policy and Page 6 of the Agenda. The application fitted within the matrix as it offered conditions that alcohol would be waiter/waitress service to persons seated at tables and ancillary to a table meal only, and only until 11pm. Each application was still considered on its own merits and there was discretion to depart from the policy where justified.
- 23.5 Councillor Wares asked for clarification that the premises wanted to operate as a café/takeaway. The Licensing Officer confirmed that a takeaway service was not a licensable activity until 11pm. Councillor Wares stated that there had been planning permission granted for a takeaway service.

### **Representations from Other Parties**

- 23.6 Mr Rolfe set out his representation as set out on page 19 of the agenda. He objected to the application on grounds of the Prevention of Crime and Disorder and the Prevention of Public Nuisance. He stressed that over a third of business premises in St James's Street could now sell food or refreshments of some kind. Of these 27 were licensed and only 19 were unlicensed cafes or takeaways. Although the review of licensing policy in

preparation by Brighton & Hove City Council was proposing in its Matrix that in the CIZ that covered St James's Street, café/bars would ideally be licensed until 11.30pm, this was not yet policy. Mr Rolfe stressed that creating more cafes, licensed or not, did not create a 'café society' as the experience of the last 10 years had demonstrated. Mr Rolfe stressed that the excesses of visitor behaviour since the Licensing Act came into force, suggested that there needed a change of tack.

- 23.7 Mr Rolfe stressed that not all the 4000+ residents living in the narrow residential streets that feed off St James's Street kept late hours. There were many older residents and families with young children who required undisturbed sleep from an hour much earlier than 11.30pm. Mr Rolfe expressed concern about the provision of takeaway food and the availability of alcohol whilst customers waited. Mr Rolfe made the point that the police had all but ceased to have any input into the control of disorderly behaviour, particularly after dark. He considered it was important that other signals were given to visitors and revellers as to their expected conduct in the city at large. A good first step would be to cease promoting the expected use of alcohol at every opportunity. Mr Rolfe urged the Panel to refuse the application.
- 23.8 Mr Rolfe set out the objections on behalf of the Kingscliffe Society and Mr & Mrs Scoble as presented in the letters printed on pages 26 to 29 of the agenda. Concerns raised included the small scale plan provided which did not provide sufficient information; the problems caused by another café bar in the CIZ; the effect of the application on individuals and families with children living in the densely populated streets in the area of St James's Street; the provision of public toilets in the premises and the concern that the hours for sale of alcohol were too long – 8am to 11pm. Trevor Scoble's representation brought attention to the B&HCC Queen's Park Crime and Disorder data.
- 23.9 Councillor O'Quinn asked Mr Rolfe if he was worried about people gathering outside the café bar. Mr Rolfe replied that people gathering outside would affect residents such as Dr Thomas. Noise travelled further at night, and reverberated through the narrow streets. Mr Rolfe was worried about queues forming outside the premises if there was to be a takeaway service.
- 23.10 Mr Barclay asked why the Kingscliffe Society assumed that there would be no toilets in the premises. Mr Rolfe replied that they had based their concerns on the plan provided. Mr Barclay stated that there was a customer toilet in the basement.
- 23.11 Dr Janie Thomas presented her representation as set out in her letter of objection on page 21 of the agenda. Dr Thomas wished the applicants success with their business but did not want to see the sale of alcohol. The premises was in the CIZ and it was incumbent on the applicant to convince the local authority that the sale of alcohol would not have a negative impact. Dr Thomas could see nothing exceptional in the conditions referred to in the agenda. Dr Thomas was concerned that these conditions opened the way for future applications to have similar conditions.
- 23.12 Dr Thomas questioned whether the toilet in the basement would be suitable for disabled people. She detailed current problems experienced in the area with people urinating in the surrounding streets and nearby garages. Residents were very concerned regarding public nuisance and did not want any increase in unpleasant nuisance. The area was awash with licensed premises and she hoped that the Panel would refuse the application on the grounds of prevention of public nuisance.

- 23.13 Dr Thomas confirmed that she lived in Charles Street, which was very close to the premises. She had lived there for 30 years. Neighbours had written letters of objection but were away at the moment.
- 23.14 Councillor Wares noted that Charles Street was midway up St James's Street and asked Dr Thomas if the street was used as a link between the seafront and St James's Street. Dr Thomas confirmed this was the case. People from the seafront used the street to find eateries and shouted and caused a nuisance.
- 23.15 Councillor Wares asked Dr Thomas if the applicant had contacted her regarding a change of hours. Dr Thomas replied that Mr Barclay had written to her to ask her to withdraw her representation. He had stated that he would change the hours for the sale of alcohol to 12 noon to 11pm. Dr Thomas quoted a letter from Mr Barclay in which he stated that the restaurant would be open at 8am to serve breakfasts. Alcohol would only be served with the lunch menu from 12 noon. Mr Rolfe confirmed that he had received this information in an email from Mr Barclay.
- 23.16 Councillor O'Quinn asked Dr Thomas if she would be concerned if people queuing outside the premises late at night might need to use the toilet. Dr Thomas confirmed this was a concern.
- 23.17 Councillor O'Quinn asked if Dr Thomas would be happier if the sale of alcohol was changed from 8am to 11pm to 12 noon to 11pm, or if she would still have objections to the licence. Dr Thomas replied that she would still not be happy and felt that there was no reason to go against the CIZ policy.

### **Representation from the Applicant**

- 23.18 The applicants Mr Barclay and Ms Evangelista set out their representation. The applicants explained that the premises originally had A1 permission but now had A3/A5 planning permission for a restaurant/takeaway. The premises was trying to attract customers who wanted a more healthy balanced life. The restaurant would be open from 8am to 11pm. Alcohol would be served from 12 noon with lunch menus. Pizzas would be served with wine or beer. Alcohol would be served to people at tables and there would be no vertical drinking. Customers would not be able to go outside with a drink. CCTV cameras would record 24/7 and would detail the time and date. The applicants would co-operate as much as possible with the police. The applicants believed that customers were going to be healthy balanced types of people. There would be trained staff who would implement the Challenge 25 policy.
- 23.19 Mr Barclay stated that he could appreciate Dr Thomas's concerns as he and his partner had lived above the premises. They would do everything they could to keep noise down. He stressed that customers would be expected to leave in small groups. Mr Barclay explained that there were two toilets in the basement of the premises. One was for staff and the other for customers. There was direct access from the restaurant to the toilet. Health & Safety had confirmed that the number of toilets was sufficient and customers would not be able to access the food preparation area.
- 23.20 The applicants stressed that they were very health conscience people who recognised the problem of noise in the area. They now had tenants living upstairs in the premises. They were trying to do as much as possible to create a nice environment for their

tenants. They did not see why a restaurant should not have an alcohol licence. 12 noon seemed a reasonable time for a glass of wine served with a proper meal.

- 23.21 The Chair asked when the premises was due to open, and whether it would still open if it was not granted an alcohol licence. The applicants replied that the premises was due to open in the middle of October and that they would still open without a licence. The Chair asked the applicants when they intended to stop serving food and drink, bearing in mind that the closure hour was 11pm. Mr Barclay replied that this had not been discussed but 10.30pm seemed a reasonable time to stop customers entering the restaurant and for staff to stop serving alcohol.
- 23.22 The Chair raised the issue of daytime takeaway sales. She noted that a licence was not needed until 11pm. She asked if alcohol could be taken away. Mr Barclay confirmed that alcohol could not be taken away, but customers could take away soft drinks. The Chair noted that the applicants had emphasised healthiness and asked why they wanted to sell alcohol. The applicants replied that they did not consider one glass of wine to be unhealthy. The Chair asked whether spirits would be sold and whether there would be a maximum strength on beers. The applicants replied that only beers and wine would be sold. There would be no maximum strength on beers. The Panel Lawyer stressed that she did not consider such a condition as necessary. Maximum strength conditions were normally placed on off licences.
- 23.23 Councillor O'Quinn asked Mr Barclay why there appeared to be a presumption that vegans did not drink a lot. Mr Barclay replied that it was anticipated from market research that the premises would attract 80% female customers. They were less likely to cause problems and urinate in the street. Most of the problems were caused by men shouting in the street.
- 23.24 Councillor O'Quinn asked if there was a smoking policy. She stressed that if people smoked outside it would cause a noise. Mr Barclay replied that he could not stop people from smoking outside. There was an outside terrace for 4 people. Councillor O'Quinn asked if there was CCTV in the café. Mr Barclay replied that there were 8 CCTV cameras, pointing inside and outside the premises. Councillor O'Quinn asked for details of the Challenge 25 policy. Mr Barclay replied that all staff would be trained to implement the policy. They would not serve anyone in a drunk and disorderly state. Councillor O'Quinn noted that there would be 25 covers. She asked how the applicants would operate in such a small area. Mr Barclay replied that the total area of the premises was 45 metres square. There were 25 covers inside and table and chairs on the outside terrace.
- 23.25 Councillor Wares noted that the applicants had said that their clientele would not impact the area. He asked if the applicants would turn away customers if they were 80% male. Mr Barclay replied that they would not be turned away if they were not drunk. Councillor Wares asked how important alcohol sales were to the business model. Mr Barclay replied that it was very important to the business model. He acknowledged that the business would struggle without a licence but stated that the business was 'too far down the line' to withdraw. Mr Barclay confirmed that alcohol would be served on the outside terrace. He was happy to change the hours for the sale of alcohol to 12 noon to 10.30pm.

- 23.26 Councillor O'Quinn noted that although there were 25 covers and people using the premises into the evening, there would only be one toilet for both male and female customers. She asked if this would be enough and whether there would be space for two toilets for customers. Mr Barclay replied that there was a lack of space in the basement. There would be one toilet for customers and another for staff. The Chair stated that she thought there was a requirement for new premises to provide proper disabled access. Mr Barclay replied that this matter had not been raised by planning officers. Eventually, the plan was to create toilets upstairs when the business grew.
- 23.27 Councillor Wares asked Mr Barclay if he was telling the Panel what she wanted to hear rather than what was a well thought out plan. Mr Barclay explained that everything he had mentioned would be carried out. The applicants were very flexible and lived just down the road. He was happy to make amendments to the application.
- 23.28 The Chair asked for details of the type of market research which showed that 80% of customers would be female vegans. Mr Barclay replied that it had been a free survey. People would only drink whilst eating and would not all leave the premises at once. There would be 2 to 4 people leaving at staggered times. Ms Evangelista stressed that the clientele would come from outside the St James's Street area. The premises would bring more ordinary people into the area. The layout of the restaurant would be very sober and was not likely to attract drunken people.
- 23.29 The Chair asked how many staff would be employed by the restaurant. Mr Barclay explained that he was the premises licence holder. There would be three staff in the morning and four in the afternoon and evening. He would be on the premises every day from 12 noon. The Chair asked how the applicant would deal with hen parties. Mr Barclay stressed that no-one drunk or rowdy would be allowed in the restaurant.
- 23.30 Dr Thomas asked if vegan wine and beer would be sold and Mr Barclay confirmed this was the case. Dr Thomas assumed some vegans might smoke. Mr Barclay replied that he did not know any vegans that smoked. There would be signs outside the premises asking people to keep quiet. Dr Thomas asked the applicants about the legality of the outside seating area. Mr Barclay replied that the area had been there for 2 years, long before his involvement with the premises. He was speaking to the relevant people about this issue. Dr Thomas made the point that there were other premises that sold vegan food. Mr Barclay replied that there was no where else in Kemp Town.
- 23.31 Councillor Wares asked if the Panel were minded to grant the application, whether the applicants would accept a condition stating that no alcohol would be served outside the building. Mr Barclay replied that he was in discussions with planning with regard to moving the window forward. He would prefer that area to be part of the shop and would prefer people not to smoke. He would be happy for conditions to be put in place to state that there should be 2 tables for people outside and that no alcohol should be served outside.
- 23.32 The Panel Lawyer stressed that the conditions needed to be proportionate and necessary. In other applications conditions had been placed to have an earlier closing hour on a terraced area. However, each application had to be considered on its own merits.

- 23.33 Mr Barclay informed the Panel that he had found when living above the shop that people from the Kebab shop opposite tended to loiter in the terrace area. He felt that if his customers were able to sit there it would stop general loitering and anti-social behaviour.
- 23.34 Mr Rolfe asked if the applicants had any other licence experience. Mr Barclay replied that he and Ms Evangelista had both worked in bars. They would be receiving licensing training.
- 23.35 Mr Rolfe asked for details of the type of pizza oven being used. Mr Barclay explained that it was a very good oven. It would only take two minutes to make a pizza. It would take a maximum of 5 minutes to serve a pizza.

### Summaries

- 23.36 The Licensing Officer stated that this was an application for a new premises licence for Purezza. The application had been amended to open for seven days a week from 8am to 11pm and for the supply of alcohol to be from 12 noon to 10.30pm. The Licensing Officer stressed that the local authority had an enforcement policy and would investigate complaints & breaches of the conditions. All new licenses would receive visits by officers. All premises must have a DPS but it was not necessary for the DPS to be on the premises all the time. The representations had asked the Panel to refuse the application on grounds of prevention of public nuisance. In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:
- the steps that are necessary to promote the licensing objectives;
  - the representations (including supporting information) presented by all the parties;
  - this Guidance;
  - its own statement of licensing policy
- 23.37 Each application was to be considered on its own merits and the Panel needed to consider whether the application would add to cumulative impact. The application fitted in with the decision making matrix and may be granted subject to conditions. Any conditions should be clear, precise and enforceable. The Panel may refuse the licence on the grounds that it would be necessary for the promotion of the licensing objectives.
- 23.38 Dr Thomas set out her closing statement. She stated that changes had been suggested 'on the hoof'. She considered that there had been nothing exceptional in the application to depart from the policy conditions regarding the CIZ. Dr Thomas considered the toilet situation unsatisfactory and was concerned about the uncertainty about the front terrace. There were premises in the vicinity where people could have vegan pizzas.
- 23.39 Mr Rolfe set out his closing statement. He stressed that St James's Street was not a destination address. He suggested that the applicants had a chance to be unique in a different way and create a peaceful environment in the premises.
- 23.40 Mr Barclay set out his closing statement. He stressed that the council's Matrix allowed restaurants to open until midnight. Purezza was the first vegan pizzeria in the country and had a lot of backing from the public. It would be good thing for Brighton to have the restaurant in place.

- 23.41 The Panel Lawyer reminded the Panel of paragraph 2.69 of the Brighton & Hove City Council Statement of Licensing Policy. This stated that the special policy was not absolute and if an application was unlikely to add to the Cumulative Impact of an area it may be granted. The impact could be different for premises with different styles and characteristics. A small restaurant may be considered exceptional circumstances. 'in relation to this, the licensing authority considers it is more proportionate to look favourably upon a pub wanting to open to 11pm or a restaurant until midnight as it has emerged from all the evidence and consultation responses that these type of premises operating within these hours are unlikely to add to the cumulative Impact in the area.'
- 23.42 The Chair informed all parties that the decision would be sent to them in writing or by email within five working days.
- 23.43 **RESOLVED** - The Panel has read all the papers including the report and relevant representations and listened to all the arguments and submissions made today.

This is 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.

Our policy states that applications for new premises licences 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. The special policy will only be overridden in exceptional circumstances. However, the policy is not absolute and indicates that a small restaurant within certain hours may be unlikely to add to cumulative impact in the area and therefore be exceptional. This application is for a small restaurant with limited operating hours and a stringent set of conditions, such that the panel has decided to grant the application subject to the following additional conditions:

- The hours for sale of alcohol will be from 12 midday to 10.30 pm every day.
- The outside terrace area will be closed and cleared of customers by 9pm each day.

Furthermore the licence will include the conditions agreed with the police as detailed in pages 30 – 33 of the agenda.

The panel considers that the amended hours for sale of alcohol agreed by the applicant and the above condition relating to the outside area and those agreed with the police will satisfy the licensing objectives and deal with many of the concerns raised by local residents.

It should be noted that in the event of any problems associated with the premises, action can be taken in accordance with the Council's enforcement policy and residents have the right to request a review of the licence.

The meeting concluded at 1.10pm

Signed

Chairman

Dated this

day of