

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

10.00am 31 AUGUST 2016

COMMITTEE ROOM 1, BRIGHTON TOWN HALL

MINUTES

Present: Councillors; Deane, O'Quinn and Simson

Officers:

PART ONE

30 TO APPOINT A CHAIR FOR THE MEETING

30.1 Councillor O'Quinn was appointed Chair for the meeting.

31 PROCEDURAL BUSINESS

31a Declaration of Substitutes

31.1 There were none.

31b Declarations of Interest

31.2 There were none.

31c Exclusion of the Press and Public

31.3 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).

31.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of Item 32 onwards.

32 APPLICATION FOR A NEW PREMISES LICENCE, BARCODE RESTAURANT, 128 CHURCH ROAD, HOVE

- 32.1 The Panel considered a report of the Director of Public Health in relation to an application for a new premises licence for Barcode Restaurant, 128 Church Road, Hove. Present at the hearing were: Mr D Simmonds and Mr J Cooper who were representing the Applicant; Ms T Petherick and Ms P Robinson, local residents; and Councillor Noonan.
- 32.2 The Lawyer stated that it appeared that the Notice of Hearing had not been sent to relevant parties. Although the parties had been informed of the date of the hearing through communication with the Licensing Authority, they had not been sent a formal Notice of Hearing. The Lawyer stated that under the Regulations, the Panel could either adjourn or proceed with the hearing.
- 32.3 The Chair said that the Panel would ascertain the views of those present before they made a decision. It was noted that the Applicant was not in attendance, but he had already given his apologies and confirmed that Mr D Simmonds would be acting on his behalf. There were six representations; two from Councillors and four from local residents. One Councillor was in attendance and the other had already stated they would not be attending. Of the four local residents two were in attendance, two were not but they had not indicated if they wished to attend the hearing.
- 32.4 Mr Simmonds confirmed that he had instructions to act on his clients behalf, and he was content to proceed with the hearing. He noted that there was a commonality in the issues raised in the representations and that two local residents and a councillor were in attendance. He suggested that everyone had known on the date and time of the hearing, and therefore those who were not there had chosen not to attend. Councillor Noonan confirmed that she had been made aware of the date of the hearing, and that Councillor Wealls had not been able to attend the hearing. Councillor Noonan asked that if the Panel chose to proceed with the hearing that they allowed time for those papers, which had not been sent, to be read. Ms P Robinson said that she was not aware of the hearing until yesterday and would prefer the hearing to be adjourned so she could have time to prepare. Ms T Petherick said she had been informed of the date of the hearing, but had not had confirmation and asked that the hearing be adjourned to allow her time to discuss the issues with other residents. The Licensing Officer apologised that the Notice of Hearing did not appear to have been sent. Additional papers had been submitted by the Applicant, and on 24 August 2016 an email had been sent to those making representations supplying a copy of the new paperwork and stating the date of the hearing. It was after that email, to which most people replied, that it came to light that the Notice had not been sent.
- 32.5 The Panel adjourned to consider whether to continue with the hearing.
- 32.6 The Lawyer stated that the Panel had agreed to proceed with hearing the case. The Panel accepted that a formal Notice of Hearing had not been sent, although an email had been sent on 24 August 2016 which had alerted those to the date of the hearing. The Panel regretted that the Applicant was not in attendance, but they had already indicated that they would not be attending and had not therefore been disadvantaged by the failure to despatch the Notice of Hearing, and his representative had stated they would prefer to proceed. The Panel noted that two people making representations were not in attendance, and confirmed that the issues they raised would be fully considered.

The Panel agreed to allow a further 30 minutes for all present to fully read any papers they had not previously seen, before the hearing would start.

Introduction from the Licensing Officer

32.7 The Licensing Officer highlighted the following:

- The application was for a new premises licence for Barcode, 128 Church Road, Hove.
- The application proposed that the premises would be operated as a café bar with customers seated at tables and chairs, and served both drinks and food by waiter/waitress service to those seated at tables. There would be no vertical drinking. Substantial food including table meals would be available at all times the premises was open.
- The application sought to have: Sales of Alcohol 8am – 10.30pm Monday to Saturday and 8am – 10pm Sunday on the premises only. And opening hours of 8am – 11pm Monday to Saturday and 8am – 10.30pm Sunday.
- The premises did not fall within the Cumulative Impact Area or Special Stress Area.
- The Licensing Team received 7 representations. They were received from the Environmental Protection Team, Ward Councillors and local residents.
- The Representations had concerns relating to Prevention of Crime and Disorder, and Public Nuisance.
- The Environmental Protection team withdrew their representation following an agreement of the suggested conditions. These were:
 1. There will be no regulated entertainment
 2. The side doors and windows on Osborne Villas will be kept closed after 8pm (other than for entry or egress)
 3. Customers wishing to go outside to smoke will not be allowed to take drinks outside and will be encouraged to use the Church Road area.
 4. Notices will be displayed asking all customers to respect the neighbours and leave quietly
 5. The fan which is controlled by the INvertek IP66 speed controller must only operate at 40.
 6. The fan must be turned off while the restaurant is closed from 11pm to 8am Monday to Saturday and 9am to 10.30pm Sundays and Bank holidays
 7. The speed controller should remain locked at 40 with only the restaurant manager having access to change the speed.
- Further information was received from Mr Simmonds to accompany the application on the 23rd August 2016. The further paperwork was sent to the Panel and those making representations.
- There had been no further withdrawal of representations.

32.8 The Licensing Officer responded to questions as follows:

- If the extractor fan exceeded the maximum designated level the premises could be issued with a Noise Abatement Notice. If there were further breaches they could be prosecuted. If there was a condition on the Licence re the extractor fan, and it was breached, it would be a breach of the Licence too.
- There was currently a Noise Abatement Notice on the premises

Representations from Councillor Moonan and Local Residents

32.9 Councillor Moonan addressed the Panel and stated the following:

- There had been long standing concerns with the premises, and she wanted reassurance that there would be a new manager and that the DPS was qualified to manage the licence.
- There had been issues with the flue and there was on going concern over who would have access to the extractor fan and thereby be able to adjust its settings.
- Given the history of the premises, it would be preferable for a time limit to be given on a licence granted to allow for a review to ensure it was being fully complied with.

32.10 Ms P Robinson addressed the panel and stated the following:

- A new fan had been installed, but there was still concern that the settings could be changed to make it go faster, which could lead to further noise problems
- Given the number of issues with the premises a time limited licence would be preferable.
- Staff still appeared to be residing in the top floor 128 Church Road.

32.11 Ms T Petherick addressed the panel and stated the following:

- Problems with the noise of the fan had been on-going since July 2015.
- Previous noise abatement notices had been ignored.
- Was concerned over the change of ownership, and that Mr Emad and Mr Foad Abdulkani may still be involved in the running of the business. A new company had been set up on 20 June to run the premises, which was only a matter days after a previous unsuccessful application for a Licence.
- A time limited licence would ensure that the premises were reviewed.
- Ms Petherick asked that if the Panel were minded to grant a licence that it not be done until the Applicant and DPS were back in the country.

The lawyer stated that if a licence were granted, it would run from the date of the decision

Representation from the Applicant

32.12 Mr Simmonds addressed the Panel and made the following points.

- He apologised that the Applicant Mr M Abdulkani, and the DPS could not be present. Mr Abdulkani, had to return to Iran due to family issues and was not likely to return to this country until the end of September 2016. The DPS was also not able to attend as he was on a pre-booked holiday and would not return to 7 September 2016.
- Mr Mohammad Abdulkani was no relation to Mr Emad and Mr Foad Abdulkani.
- The premises in question today were the Ground Floor and Basement of 128 Church Road. The first floor was 128a Church Road which was currently occupied by Mr Emad Abdulkani, and Mr Foad Abdulkani, and they had indicated that they would soon vacate the premises.
- The Freehold of 128 Church Road is owned by another Mr Abdulkani, who does not live in this country.
- The Applicant had instructed City Electrical Services to replace the fan. It had been replaced with a water cooled unit, which was controlled by a remote controlled unit. The remote control would be kept with the unit which was within a metal cage and which

could only be opened by the key holder. This would ensure that only the person in charge could access the unit to adjust the level of the fan. The fan would be turned off at 11pm each day. The new fan would not be used above level 40, a setting which had been agreed with the Environmental Health Officer.

- Doors and windows to the restaurant would be kept closed and customers would not be allowed to take their drinks outside.
- Alcohol would only be served to those sitting inside the restaurant.
- There would be no vertical drinking.
- The possibility of a time-limited licence had been suggested by those making representations, but it would not be appropriate and not something which the Panel could do.
- The Applicant owned a number of establishments and was therefore experienced.
- The DPS had their Licence issued by Adur & District Council. He had experience of being a DPS. The Police had had no concerns over them being a DPS.
- This was a new application
- Those making representations were objecting on issues which occurred in the past, and we feel have been addressed.

Questions to the Applicant from the Panel

32.13 The following questions were put to the Applicant's representative:

- Councillor Deane referred to the replacement of the fan, and raised concerns over the provider of the new equipment. A copy of the letter from City Electrical Services had been provided, but she noted that there was no record of the company anywhere and the address given for the business was registered to another company. This raised concerns over the reliability of the information provided about the fan. Mr Simmonds said that he only had the information provided about the electrician. However, the fan was now installed and was working; if it was not working it would breach the conditions of the licence.
- Councillor Simson noted the previous owner of the premises, and the Applicant shared the same name and asked if there was any relationship between them. Mr Simmonds advised they were not blood relatives, and the name was very common in Iran.
- Councillor Simson asked if the current Applicant had had any previous involvement with the business. Mr Simmonds said that the current Applicant had not been involved before. He had not currently taken over the running of the business, and if this licence was not granted he wasn't sure what he would do. If the licence was granted Mr Emad Abdulkani, and Mr Foad Abdulkani, would no longer be involved in the business.
- Councillor Simson asked if the proposed DPS had worked at the venue before, and which premises he had been a DPS at before. Mr Simmonds confirmed he had worked at the premises, but was unsure where he had been a DPS.
- Councillor Simson asked if Mr M Abdulkani would be involved in the day to day running of the business. Mr Simmonds said he would be involved to an extent, but he had a number of other businesses too.
- Councillor Simson asked for confirmation that, if the licence were granted, Mr Emad Abdulkani, and Mr Foad Abdulkani would have no further involvement in the business. Mr Simmonds said that it was his understanding that they would not.

- Councillor Simson asked what steps would be taken to ensure drinks were not taken outside. Mr Simmonds said that drinks would only be served to those seated at tables, and customers would not be allowed to take drinks outside.
- Councillor Simson asked if the current staff would remain, and was advised they would.
- Councillor Simson asked how many managers there would be, and was advised there would be three excluding the DPS. The names of the managers were not known.
- The Chair asked how long the lease was for and who the freeholder was. Mr Simmonds said that he didn't know the length of lease, but knew that it wasn't a short term lease. The freeholder was Mr A Abdulkani.
- The Chair asked if the upstairs of the premises would be used, and was advised that it wouldn't.
- Councillor Simson noted that the applicant had arranged for the fan to be replaced, but had not yet taken over the running of the premises. Mr Simmonds said the applicant wanted to ensure that the business was able to continue trading.

Questions to the Applicant from those making representations

- Councillor Noonan noted that the fan would not be set above speed 40, but was concerned that on a hot day staff may be tempted to increase the setting. The lawyer advised that there could be a condition stating that the speed did not exceed 40.
- Councillor Noonan noted that Mr Simmonds had said that there was no blood relationship between the Applicant and Mr A Abdulkani, Mr Emad Abdulkani, and Mr Foad Abdulkani. Mr Simmonds said he had been told they were not related.
- Councillor Noonan noted that Mr Emad Abdulkani, and Mr Foad Abdulkani would no longer be involved in the business and asked if the Panel could add that as a condition to the licence. Mr Simmonds said he did not think that that was possible or appropriate. The lawyer advised that that could be possible if the Panel felt it was necessary.

Summaries

32.14 The Licensing Officer gave the following summary:

Where relevant representations are made, the authority must:

- Hold a hearing to consider them
- Have regard to the representations and take such of the steps it considers necessary for the promotion of the licensing objectives

The steps are— .

- (a) to grant the licence subject to -
 - (i) the conditions mentioned.
 - (ii) any relevant mandatory conditions
- (b) to exclude from the scope of the licence any of the licensable activities to which the application relates
- (c) to refuse to specify a person in the licence as the premises supervisor
- (d) to reject the application

32.15 Councillor Noonan on behalf of those making representations gave the following summary:

- The premises had a history of being mismanaged, and would request a condition that the current managers are no longer involved in the business.

- Concerned that neither the Applicant nor the DPS were in attendance at the hearing.
- Request that the licence be time limited to allow for a review in due course.

32.16 The Applicant gave the following summary:

- This application fell within the matrix as a café/bar
- Apologised that the Applicant was not able to attend the hearing in person.

32.17 The lawyer advised that, unless the Applicant was in agreement, the Panel could not agree to set a time limited licence.

32.18 **RESOLVED:**

The Panel has read all the papers, including further written submission on behalf of the Applicant and emails in response by those making representations, and has listened to all the submissions and evidence presented at the hearing.

This is a further, second, application for a new premises licence for the same licensable activities and with similar conditions as a previous licence for these premises which lapsed in December 2015.

The panel has been made acutely aware of the history of these premises and of the way in which they have been managed in the past which has caused public nuisance and distress to local residents. We have been assured by the Applicant's representative that this is an application by a new applicant with no connection to the previous management. The panel were disappointed that the new applicant and DPS were not able to be present in person at the hearing in order to answer questions from the panel and other parties. Mr Simmonds did explain the reasons for their absence and that he had full authority to represent them and make decisions on their behalf.

Assurances were given concerning the operation of the fan ventilation unit which has caused many problems in the past and the representation from the environmental protection officer has been withdrawn upon agreement to these conditions.

This has been a difficult decision but on balance the panel has decided to grant this application with all the conditions on the operating schedule and those agreed with Environmental Protection and the addition of two further conditions and two amended conditions. These are as follows:

1. A personal licence holder shall be on the premises at all times when alcohol is sold.
2. Emad and Foad Abdulkani are to have no involvement in the management or operation of these licensed premises. The panel consider this is an appropriate condition, notwithstanding the reservations of the Applicant's representative, in view of the exceptional history of these premises to ensure a break with the past and to meet the concerns of the residents.
3. The 3 conditions relating to the fan on pages 25 and 26 of the agenda are to be condensed into 2 conditions as follows:

1. The fan which is controlled by a speed controller must never operate at more than 40.0 and can only be accessed by the restaurant manager to switch it on or off or to reduce the speed.
2. The fan must be turned off while the restaurant is closed from 11pm until 8am Mondays to Saturdays, and from 10.30pm to 9am on Sundays and Bank or public holidays.
4. The condition relating to smoking and outside drinking to be amended as follows:
Customers will not be allowed to take any alcoholic drinks outside the premises.
Smokers will be encouraged as far as practical to use the street entrance fronting onto Church Road.

The Panel considered the suggestion of a time limited licence from those making representations, but did not believe this was within their powers to grant. Under the Act there is the power to review licences should problems occur.

The panel believes that with all the above conditions and new management the premises should be able to operate within the terms of the Licensing Act and promote the licensing objectives. Please note that the licence will not come into effect until the DPS has returned from leave on the 7th September 2016 and is able to be present at the premises.

The meeting concluded at 2.00pm

Signed

Chairman

Dated this

day of