

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

10.00am 13 JUNE 2016

COMMITTEE ROOM 1, BRIGHTON TOWN HALL

MINUTES

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

Officers: Rebecca Sidell (Lawyer), Sarah-Jane McNaught (Licensing Officer), Mark Savage-Brookes (Licensing Officer), and Caroline De Marco (Democratic Services)

PART ONE

4 TO APPOINT A CHAIR FOR THE MEETING

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

5 PROCEDURAL BUSINESS

(A) Declaration of Substitutes

5.1 There were none.

(B) Declarations of Interest

5.2 There were none.

(C) Exclusion of the Press and Public

5.3 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).

5.4 **RESOLVED** - That the press and public not be excluded from the meeting during consideration of Item items 6 and 7.

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

- 6.1 The Panel considered a report of the Acting 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: The applicant & Doug Simmonds who was representing Barcode; Rob Petherick and Patricia Robinson, local residents; and Councillor Moonan.

Introduction from the Licensing Officer

- 6.2 The Licensing Officer highlighted the following:

- The application proposed a Café Bar with customers seated at tables and chairs and served both drinks and food by waiter/waitress to those seated customers. There would be no vertical drinking. Substantial food including table meals would be available at all times the premise is open.
- The application proposed supply of alcohol Monday to Saturday from 08:00 to 22:30. Sunday 08:00 to 22:00, on the premises. The hours the premises were open to the public was Monday to Saturday 08:00 to 23:00 and Sunday 08:00 to 22:30.
- The Premises did not fall in the Cumulative Impact Area or the Special Stress Area.
- Eight representations had been received. They were from the Environmental Protection team, local residents and local councillors. Representations had concerns relating to Prevention of Crime & Disorder and Prevention of Public Nuisance. The representation received from the Environmental Protection Team was subsequently withdrawn, when the Senior Environmental Health Officer was satisfied that the statutory noise nuisance had been satisfactorily resolved.
- Councillor Moonan had made a representation in time but it had been sent to an officer who was on maternity leave. It had been circulated to all the parties on Friday 10 June 2016.

- 6.3 The Licensing Officer responded to questions as follows:

- The original licence was issued on 19th November 2013. The company was later dissolved. On 20th April 2016, the applicants were advised that they were selling alcohol without a licence. The conditions set out in Appendix A were almost identical to the previous conditions. A condition regarding bottles and rubbish was missing. (Mr Simmonds confirmed that the conditions were the same except for the upgrading of CCTV and Challenge 25. The omission of a condition regarding bottles and rubbish was a mistake. The applicants had no problem with such a condition.)
- The licence was only for the inside of the premises.
- The Licensing Officer was asked if applications for TENs included a licence for outside seating and open windows after 8pm. She replied that she did not have the detail of the TEN applications. The same conditions would not necessarily apply. It was confirmed that there was no authorisation of a premises licence or Temporary Event Notice for Thursday 9th June 2016.
- Following the visit from Environmental Health on 20th April an application for a new premises licence was submitted on 6th May 2016.

- It was confirmed that the applicants were advised to remove all alcohol from display. It was alleged that alcohol had been sold from the premises, but not justified.
- Seven TENs had been notified to the local authority to cover weekends up until the hearing. The last one was for the 10th and 11th June 2016.
- It was confirmed that tables were set out only inside the premises.

Representation from Councillor Moonan and residents

6.4 Councillor Moonan addressed the Panel and stated the following:

- Councillor Moonan, Councillor Wealls and residents considered that the principal of a restaurant was acceptable. They were concerned about the management of the restaurant and the Designated Premises Supervisor (DPS) and the ability to uphold the licensing objectives.
- Councillor Moonan had visited the restaurant on 9th June 2016 and had purchased and drank beer. She had clear evidence in the form of a receipt. The evidence had been submitted to the council.
- Windows had been left open well past 8pm and there were outside seats. Bottles had been put outside late at night causing a great deal of disturbance to neighbours.
- There were longstanding issues regarding planning and noise.
- Mr Abdulkhani would not uphold the licensing objectives and it was Councillor Moonan's view that a licence should not be approved.

6.5 Patricia Robinson addressed the Panel and stated the following:

- The applicant had not been meeting the conditions of the licence. Bins were sometimes put outside at 11.00pm or later. Vertical drinking did occur. A condition had been in place stating that the windows facing Osborne Villas should be shut at 8.00pm; however, they were shut late or not at all. Over the last weekend they were not shut until 9.00pm.
- There was a huge issue with a very loud flue. Residents were being subjected to noise.
- The owner had disregard to the council and to procedures. Ms Robinson had no problem with any of the other businesses in the area.

6.6 Rob Petherick addressed the Panel and stated the following:

- Mr Petherick stated that he lived next door to the premises.
- The premises had been operating without a licence since December 2015. They had been shown not to be fit to have a licence.
- Music had been played outside, and there had been street furniture on the Osborne Villas side. Mr Petherick had seen alcohol being sold on the premises on 2nd June 2016.

6.7 The following responses were made in relation to questions from the Panel.

- The objectors were asked if they would change their position if there was a different Designated Premises Supervisor. Ms Robinson replied that it was a family business.
- The objectors were asked if they were objecting to the DPS and the family who ran the business. Mr Petherick and Ms Robinson replied in the affirmative.
- Councillor Moonan confirmed that she had been served alcohol by a member of staff when seated at a table.
- Mr Simmonds confirmed that no part of the licence was to sell or consume alcohol off the premises.
- Councillor Moonan confirmed that there was no highway permission for tables and chairs on the street.

Representation from the Applicant

6.8 Mr Simmonds addressed the Panel, and made the following points:

- This was an application for a new premises licence. The previous licence had become invalid and there was currently no licence and no conditions.
- Under Temporary Event Notices, sales had been made, generally on a Friday and Saturday.
- The new application was under a new company headed by a new director and shareholder. Her role was to ensure everything worked properly. The old DPS was still employed by the company.
- During the time the application was being made, extensive sound measurements were submitted. There had been considerable work with sound specialists and insulation specialists. Planning officers had been involved. The problem with the flue had been resolved and there was now no noise problem.
- With regard to the allegation of crime, the applicants had liaised with the police and they were content with the applicant and the DPS. They had made no representation.
- There were now no complaints from the responsible authorities. It was a new company operated by a new director. Management operated under her guidance and control.
- If there had been problems in the past they had been dealt with. The authorities were satisfied that the application could go ahead.
- The condition regarding bottles was important and the applicants had no objection to that being put back on the licence.
- The premises was in a busy area; it was a thoroughfare with a lot of noise and nuisance, which was not always attributed to the premises.
- The new manager was in good control of the premises. She managed the finances, staff and conditions.
- The applicants believed that there was now an improved premises. There were no speakers outside having been taken down and removed. There were no tables and chairs in Osborne Villas as it was too narrow. There was a highway licence for the front of the premises, but there was no request for alcohol to be removed outside.
- Mr Simmonds suggested that the licensing objectives were all clearly promoted and would allow the premises to operate and not cause problems. He commended the application and asked the Panel to consider granting the licence.

6.9 In response to questions from the Panel the following was confirmed by Mr Simmonds:

- A question was raised as to the relationship of the new Premises Licence Holder with the previous PLH. The new PLH stated that the brother of the previous licence holder was her partner.
- A question was raised as to why a new DPS had not been appointed. Mr Simmonds explained that he was satisfied that Foad Abdolkhani would be fully aware of his responsibilities. He had recently put up Challenge 25 signs and looked at staff training. The applicant was aware that there had been problems in the past, and she was trying hard to please everyone in the area.
- The applicant was asked about evidence of recent breaches. Mr Simmonds stated that he had no knowledge of this until now. Breaches would not be tolerated.
- The applicant was asked if they denied that staff at the premises were selling alcohol without a licence. Mr Simmonds replied that the applicant should not answer that question as she was being asked if she had committed an offence.
- The applicant confirmed that the new company was totally different to the old company.
- The applicant confirmed that she had no experience of holding licences, but was involved in management. She was in charge of everything behind the scene. Foad and Emad Abdolkhani were employees of the company but not directors or owners.
- It was confirmed that the current applicant was not involved when the business went into liquidation.
- A question was asked about the suitability of Foad Abdolkhani as DPS. Mr Simmonds replied that the important thing to look for was the prevention of crime and disorder and the upholding of the licensing objectives. The police would have interviewed Mr Foad Abdolkhani in connection with the new application. Mr Simmonds had ensured that potential problems had been discussed. The application was up to date and altered. It was a new regime and everything was correct.
- Mr Simmonds was asked if Mr Foad Abdolkhani should be removed as DPS, as the day to day running of the premises had been a problem. Mr Simmonds replied that the PLH was in control of the DPS and the only person who could change the DPS. There was a clear management strategy in place to ensure that could happen if necessary.
- Mr Simmonds was asked if he was confident that the applicant could dismiss the DPS if necessary, bearing in mind the family connection. Mr Simmonds explained that Mr Foad Abdolkhani was an employee. There was a strong management strategy in place that allowed proper control.
- The applicant was asked if she had experience in managing a café bar. She explained that her family owned a hotel in Spain. She had studied for a degree in management and marketing.
- The applicant was asked about the complaint that windows had been left open. Why had they not been closed? Mr Simmonds replied that no licence or conditions were currently in place. The applicant stated that she did not know why the windows had been left open.
- A question was raised about noise from the flue extractor. It was suggested that the company had only addressed the issue when there was a threat of legal proceedings. Mr Simmonds replied that there was consultation with sound specialists and planning and it was found that there was a requirement for an

extractor. The problem could not be solved over-night; the solution was expensive and difficult, but now in place.

- The applicant was asked how the applicant could stop people from taking alcohol outside. It was explained that the service area was at the entrance to the premises and people would be advised not to take alcohol outside. Customers could take food and smoke cigarettes outside but not take out any alcohol. A notice would be put in place to amplify the condition.
- The applicant was asked how they removed alcohol from the premises after the period of the Temporary Event Notices. It was explained that alcohol was moved upstairs to a private part of the premises.
- The applicant was asked how often she was in attendance at the premises. She replied that she was there until closing time seven days a week.
- The applicant was asked how their business would be affected if the Panel was minded to grant but would not agree with the choice of DPS. Mr Simmonds explained that there would be a need to find a new person and see if they were fit for the job. This was something for the applicant to sort out. From his experience, it would be difficult to find someone readily.
- Ms Robinson asked the applicant why the sound had been so loud on Saturday 11th June 2016. The applicant stated that the sound levels had been checked by Environmental Health, who were satisfied with the levels.
- In answer to questions from Mr Petherick the applicant confirmed that she did not carry out any other full time work and that she did not live above the premises. She was now the only director of Barcode Ltd following Foad Abdolkhani's resignation.
- The applicant was asked why the old conditions were not upheld. The applicant replied that there had been a lack of communication. She was now trying to solve these problems.
- The applicant confirmed that she had been in close contact with an acoustic engineer with regard to the problem with the flue.
- The applicant confirmed that Foad Abdolkhani would still work on the premises.
- The applicant confirmed that training had been taking place.
- The applicant was asked why alcohol had been sold on 9th June 2016. Mr Simmonds stated that this question could not be answered as it would incriminate the applicant.

Summaries

6.10 The Licensing Officer gave the following summary:

- This was an application for a new premises licence as the previous licence was no longer valid.
- There were concerns that the premises licence holder of the previous licence had not upheld the licensing objectives.
- The application before the Panel was from a new company and a new director.
- The Licensing Guidance stated that 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 appropriate to promote the licensing objectives; the representations (including supporting information) presented by all the parties; licensing guidance and the council's own statement of licensing policy.

6.11 In summary, Councillor Moonan stated the following:

- She had no objections to the premises operating as a restaurant, but she did have concerns about the management. Mr Foad Abdolkhani was still closely associated with the business and was still the Designated Premises Supervisor.
- She was reassured that training was in place; however a few days ago she had been sold alcohol in the premises.
- The applicant could have closed windows and put bottles out at the right time but had not done so.
- Councillor Moonan urged the Panel to refuse the licence.

6.12 In summary, Ms Robinson stated the following:

- Problems were still ongoing and there had not been a change in attitude. She objected to the application on the grounds of prevention of public nuisance. There were serious problems with the flue.

6.13 In summary, Mr Simmonds stated the following:

- This was a new application, albeit with the same conditions.
- It was important to hear the representations but equally it was important to recognise that the responsible authorities had no problem with the premises.
- A number of allegations had been made that had not necessarily been backed up by evidence.
- Mr Simmonds stated he and the applicants believed that the licence should be granted.

6.14 **RESOLVED** – The Panel's decision was as follows:

The Panel has read all the papers and listened to all the evidence presented at the hearing today.

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

We have heard evidence from local residents and ward councillors of the problems they encountered with the previous licence relating to public nuisance and in particular breaches of conditions. The panel found this evidence compelling.

Whilst we have considered the applicant's case that this is a new company with a new director, the named DPS remains the same. This is of considerable concern to the panel as his management of the previous licence showed a clear lack of understanding of the responsibilities regarding the conditions on the licence and the Licensing Act. The panel therefore has no confidence that the current ownership and management will uphold the licensing objectives. The panel is therefore refusing this licence application.

7 SKYFALL, 42 CHURCH ROAD, HOVE - APPLICATION FOR A VARIATION OF A PREMISES LICENCE

- 7.1 The Panel considered a report of the Acting Director of Public Health in relation to an application for a variation of a premises licence under the licensing Act 2003 for Skyfall, 42, Church Road, Hove. Present at the hearing were the applicants and Justin Wagner who was making a representation.

Introduction from the Licensing Officer

- 7.2 The Licensing Officer stated the following:

- The application proposed the renovation of the first floor to become a private event space to include, live music, TV and Movie Showings, private dining space, function room and business meeting area, with a bar intended to sell alcohol as well as soft drinks. The variation was also made to add the regulated entertainment activity of films, every day from 12:00 to 00:00.
- It was confirmed that as the live music would be up to 23:00 hours it would not be a regulated activity.
- It was confirmed that the first floor already had a licence to sell alcohol. The variation was to change the layout and add the activities set out above.
- Two representations had been received. They were from the Environmental Protection Team and a local resident. The representation from the Environmental Protection Team had since been withdrawn.

Representation from local resident

- 7.3 Justin Wagner, a local resident objecting to the application, addressed the panel and made the following points:

- Mr Wagner lived in the adjacent property on the 3rd and 4th floor. On the occasions when music was played it was audible up to the 4th floor of his property. It was audible above the level of his TV on the 3rd floor. Mr Wagner had a 10 year old son and was concerned that music and the soundtrack to films would cause a noise nuisance. Noise was an issue for Mr Wagner's neighbours.
- Mr Wagner had met with the owner and general manager and had suggested that sound proofing should be installed. The stripped back wall had exaggerated sound and amplified sound. Sound was also coming through the rear windows.
- Mr Wagner hoped that a compromise could be reached.
- Mr Wagner confirmed that if windows were left open and used as a smoking terrace there could be a problem of noise.
- Mr Wagner was aware that Environmental Health had suggested that the windows be closed from 23:00 hours. There could be a problem before 23:00 hours. He would like a condition stating that windows were closed at 20:00 hours as his son went to bed at 20:00 hours.
- Mr Wagner stated that he was getting an expert to look at the issue of soundproofing.

Representation from the Applicants

7.4 The applicants addressed the Panel to set out their application, and made the following points:

- The terraced area was part of the previous plan and was not used by customers.
- The plans submitted had not increased the licensed area.
- The applicants wanted to show film and TV. The volume would not be louder than at present. There would rarely be a live DJ. TV and film was quieter than current activities.
- The applicants had provided a good neighbour pledge to residents and there had been an open dialogue. Two complaints had been received in April and May. The applicant had met with Mr Wagner on 8th June 2016 and there was ongoing dialogue.
- The premises was a restaurant and not a nightclub. It was in the interest of the applicants to be flexible.
- There was no reason why the applicants would wish to open the first floor windows as they had air conditioning. There was full front opening windows on the ground floor. These were closed at 23:00 hours.

7.5 In response to questions from the Panel and Mr Wagner the following was confirmed:

- The Licensing Officer confirmed that a current complaint had been made by Mr Wagner. Environmental Health had not found evidence as yet. A condition for music could only be added via a review process.
- The applicant confirmed that customers would never go outside on the terrace. Windows would be closed by a certain time. Doors were used for access. There was no noise from bottles at night. Bins were placed at the back and emptied in the morning after 11:00 hours. The back of the building was rear access only.
- In answer to a suggestion that a condition be placed on the application relating to rear doors and windows, the applicant stated that if the door was open it would be a security risk. He was happy for the doors to always be shut and the windows to be shut after a certain time.
- With regard to soundproofing, the applicant had exposed the brickwork on less than half of the building. He had installed padded seating and wooden cladding. There were thick fabric seats half way up the wall.
- The premises had always been a venue, and the applicants had improved the way the business traded. It was a better set up in terms of sound control. It would not be possible to sound proof from the Skyfall side, as it was not possible to soundproof exposed brickwork. If there was a specific request, it would be investigated.
- The applicants confirmed they were leaseholders.
- It was confirmed that vertical drinking could take place on the first floor. There were no restrictions on it being a restaurant.
- The applicant noted a suggestion was made that there could be a separate condition on the first floor door.
- The applicants stated that they had not received a complaint from Mr Wagner's neighbours.

Summaries

7.6 The Licensing Officer gave the following summary:

- The application was for a variation of the existing public entertainment licence.
- The Environmental Protection team had investigated a noise complaint but to date had not gathered any evidence.
- If there was a noise nuisance, then any member of the public could call for a review of the licence or it could be dealt with through noise abatement notices.
- Licensing guidance stated that the LA must give appropriate weight to:
Steps that are appropriate to promote the licensing objectives
The representations (including supporting information) presented by all the parties;
Licensing Guidance;
The Local authorities' own statement of licensing policy.
- The Panel may grant the licence subject to conditions, which needed to be clear, precise and enforceable; or the licence may be refused on grounds it was not promoting the licensing objectives.

7.7 Mr Wagner gave the following summary:

- There was an issue about the door, and he would like to see a condition imposed stating that the door be closed by 20:00 hours.
- Mr Wagner stated that he was trying to work co-operatively with the applicant.

7.8 In summary, the applicants stated the following:

- They wanted to show TV and movie content.
- They did not want to use the back of the building for customers.
- They had open dialogue with neighbours.
- The proposal would make their space more flexible to show commercial content.

7.9 **RESOLVED** – The Panel's decision was as follows:

The Panel has read all the papers, and listened to the representations made at the hearing today.

This is an application for a limited variation to add exhibition of film and changes to the layout of the premises.

The panel notes the concerns of the neighbour and that there is an ongoing investigation by Environmental Health relating to noise nuisance.

However, the panel recognises that the first floor is already licensed and that the applicant is willing to work with neighbours and consider sound proofing to mitigate noise. The panel therefore grants this variation to the licence with the conditions agreed with Environmental Health, and an additional condition that ***the rear door on the first floor shall only be used in emergencies after 8pm.*** The panel considers that these conditions will promote the licensing objectives.

The meeting concluded at 1.00pm

Signed

Chair

Dated this

day of