

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

10.00am 29 OCTOBER 2019

COMMITTEE ROOM 3 - BRIGHTON TOWN HALL

MINUTES

Present: Councillors: O'Quinn, Deane and Fowler

Officers: Mark Savage – Brookes, Licensing Officer; Rebecca Sidell, Legal Adviser and Penny Jennings, Democratic Services Officer

PART ONE

37 TO APPOINT A CHAIR FOR THE MEETING

Councillor O'Quinn was appointed Chair for the meeting.

38 PROCEDURAL BUSINESS

38a Declaration of Substitutes

38.1 There were none.

38b Declarations of Interest

38.2 There were none.

38c Exclusion of the Press and Public

38.3 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).

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

39 PIZZA GRILL & JUNCTION LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

- 39.1 The Chair introduced the Panel who considered a report of the Executive Director, Neighbourhoods, Communities and Housing requesting that members determine an application for a New Premises Licence under the Licensing Act 2003 in respect of Pizza and Grill Junction 60 Preston Street, Brighton requesting grant of a Late-Night Refreshment Licence every day between 23:00 to 04:00 (indoors).

Introduction by Licensing Officer

- 39.2 The Licensing Officer, Mark Savage-Brookes, explained that this was an application for a New Premises Licence in order to serve Late-Night Refreshments every day between 23:00 to 04:00 (indoors). It should be noted that this premises fell within the Cumulative Impact Area, where it had been identified that there was potential impact upon the promotion of the licensing objectives due to a significant number of licensed premises being concentrated in one area and in consequence of which a special policy was in place. Two representations had been received, one from Sussex Police and one from the Licensing Authority setting out concerns relating to the Prevention of Crime and Disorder, Cumulative Impact and Prevention of Public Nuisance.
- 39.3 As there was a special policy in place there was a presumption that applications would be refused, although it could be overridden in exceptional circumstances. The effect of the special policy was that applications for new premises certificates within the area, or variations which were likely to add to the existing Cumulative Impact would be refused following relevant representations. This presumption could be rebutted by the applicant if they could show that their application would have no negative Cumulative Impact. The special policy also applied to all new premises licences and club premises certificates, for example pubs, restaurants and take-away establishments.
- 39.4 The special policy was not absolute and on receipt of a relevant representation, the circumstances of each case needed to be considered and whether there were exceptional circumstances to justify departing from the special policy in the light of the circumstances of that case. If an application was unlikely to add to the cumulative impact of the area, it might be granted. The impact could be expected to be different for premises with different styles and characteristics. For example, while a large nightclub or high capacity public house might add to problems of cumulative impact, a small restaurant, theatre or live music venue (where alcohol is not the primary activity) may be considered exceptional circumstances. The fact that a premises will be/ is exceptionally well managed with a well qualified applicant, or that there are no residential premises nearby would not be considered exceptional. If the Panel decided that an application should be refused it would still need to show that the grant of the application would undermine the promotion of one of the licensing objectives and that conditions would be ineffective in preventing the problems involved.

Questions to the Licensing Officer

- 39.5 In answer to questions the Licensing officer explained that whilst there had been a premises licence in place the hours of operation which the applicants had been operating were not permitted. The applicants had co-operated when these errors had been drawn to their attention and further breaches did not appear to have occurred.

Police Representation

- 39.6 The Police Licensing Officer, Mark Thoroughgood, was in attendance to address the Panel in respect of the submission made by the Police Licensing Team. In view of the premises' location within the CIZ they had concerns that a licence if granted would undermine the Licensing objectives of the prevention of crime and disorder and public nuisance. It should be noted that the council's own Statement of Licensing Policy stated that there was a presumption that applications would be refused and would only be overridden in exceptional circumstances and they did not consider that a compelling case had been made to override that policy.
- 39.7 The premises were located on Preston Street which was in very close proximity to the main night time economy area and as such experienced significant footfall from members of the public entering and leaving central Brighton and was in an area which was already saturated with licensed premises and was also located very close to Regency Square which suffered from high incidence of anti-social behaviour.
- 39.8 The Police Licensing Officer went on to state that based on their experience, notwithstanding that alcohol would not be on sale, the provision of late night refreshments until 4.00am would encourage people to stay in the area longer rather than aiding dispersal, which would increase the risk of crime and disorder and public nuisance. The hours of operation requested would attract persons who were under the influence of alcohol and were therefore more likely to cause or be a victim of crime and or to cause a public nuisance. Due to the level of problems experienced within this part of the CIZ it was often subject to a Dispersal Order at weekends, the proposed terminal time coincided with the time at which Police officers involved with "Operation Marble" began to stand down, which could be result be an issue if any problems occurred.
- 39.9 The applicant had not offered any conditions to mitigate risk to members of the public or in order to safeguard the licensing objectives. From their experience late night take away food outlets within the night time economy tended to suffer from high incidence of crime and Police assistance was often required. The Police believed that granting this application would add to the existing negative cumulative impact in an area which was already saturated with late night/ late opening licensed premises. Additionally, they reiterated that they did not believe that the applicant had made a case for departure from policy.

Licensing Authority Representation

- 3910 The Licensing Officer, Becky Pratley who explained that she had made a representation in respect of this application on the grounds of the Prevention of Crime and Disorder and Prevention of Public Nuisance, also on the grounds that this application was contrary to the council's Statement of Licensing Policy (SoLP) and fell within the Cumulative Impact Zone. The Licensing Officer went on to explain that on 27 August they had received a complaint about the necessary Planning consents not being in place and that the premises which was operating as a takeaway with seating advertised that it was open until 4am daily, subsequent investigations had revealed that the premises was operating without the necessary licence being in place.
- 39.11 The Food Business Operator had been contacted by mail and advised of the position and of the penalties which could be invoked in consequence of carrying out

unauthorised licensable activities. The applicant had called back the same day to advise that they had been unaware that a licence was required and had immediately requested details of how to apply. A further complaint had been received subsequently and was currently under investigation, the complaint was being investigated that did not however constitute “proof” that an offence had occurred and that was a separate matter to the application before the Panel for consideration. In part, the complaint had alleged that the blue Regulation 25 advising that the application had been made had not been displayed correctly on site or a newspaper advertisement placed. This had been investigated and those allegations were found to be incorrect.

- 39.12 Whilst the SoLP included a Matrix approach in recognition of the diverse types of premises operating across the city. This application described the venue as “a small restaurant that sold hot food to eat in takeaway”. EssentialIntationy therefore part of the application was for a Late-Night Takeaway in the CIZ, where the Matrix clearly stated that whilst the policy was not absolute, there was a presumption that applications would be refused following consideration of the relevant representations. Restaurants were permitted but only until midnight, this application sought to operate until after midnight every day of the week. Although each application was to be considered on its individual merits, she did not believe that the applicant had demonstrated that there were exceptional circumstances to justify a departure from policy.
- 39.13 Applicants were expected to include positive proposals with their application identifying how they would manage any potential risk associated with their operation. Where specific policies applied, for example in relation to cumulative impact, applicants were also expected to demonstrate an understanding of how the policy impacted on their application, measures they would take to mitigate any impact and why they considered. The operating schedule on the application had been left blank and neither the Statement of Licensing Policy, nor the premises location in the CIZ had been mentioned or referred to in any way as part of the application. The applicant had not demonstrated exceptional circumstances to justify departure from policy or measures they would put into place to ensure that they would not add to the existing cumulative impact of the area. The applicant’s had been advised before making their application that the Statement of Licensing Policy was essential reading before an application was made. Whilst pleased that applicants had made a licence application as soon as the problem had been notified to them, she was of the view that granting this licence was likely to add additional burdens in the Cumulative Impact Zone, nor identified measures which they proposed to undertake to address that.

Applicants Representation and Questions to the Applicant

- 39.14 The applicants explained that they had relocated from London where the DPS, the applicant’s brother in law had a number of years experience operating licensed premises. The applicant himself was a former taxi driver. They had put all of their available funds and savings into the business and stood to lose everything if they were to lose their licence. It was cited that their premises albeit in the CIZ was in a quieter location which was not prone to trouble. Also, they did not serve alcohol and by serving food helped to soak up any alcohol which had been consumed.
- 39.15 The applicants also cited the fact that there were a number of other premises in the area which operated in the vicinity which had the terminal hour to which they had been

operating. When they had purchased the premises and taken on the licence for it they had been led to believe that their premises could operate until the same time and had not realised that was not the case.

- 39.16 The Legal Adviser to the Panel explained the premises to which reference had been made had been transferred under “grandfather rights” at the inception of the 2003 Licensing Act Legislation which pre-dated the current CIZ and the Council’s current Statement of Licensing Policy which recognised that part of the city had reached saturation point in terms of the number of premises. The Chair stated that the situation in existence now differed from what might have been the case in the past, the CIZ reflected that.
- 39.17 Even when refreshments and no alcohol were served late at night that encouraged people to stay in an area rather than to disperse giving rise potentially, to greater risk of antisocial and other behaviours which ran contrary to the 4 licensing objectives. The later the terminal hour of a premises the greater the impact it could also have when the Police’ “Operation Marble” was standing down.
- 39.18 The Chair, stated that the applicants should have taken far greater care in researching their business model and the activities and hours of operation before proceeding, if they had purchased a premises at another location outside the CIZ they The Chair, also enquired why the application form had not been properly completed, it contained no detail regarding, training, security measures, cctv which it was expected would be contained in any application as standard. The Chair, and other Panel Members then sought clarification regarding the hours of operation which the applicants could operate, also in relation to cctv and to security back-up.
- 39.19 The applicants explained that the bulk of their business was conducted after 11.00pm and they did not attract a sufficient number of customers earlier in the day for the business to be viable. They simply wanted to operate on an equal footing with other businesses in the vicinity and did not understand what was required and were prepared to meet any obligations placed upon them by the Police and the Licensing Authority.
- 39.20 In answer to further questions by the Panel the applicants explained that they had not met with the Police further in advance of that day’s hearing as the Police had stated that they placed objections and that a case could be made by all parties at the hearing. Following the outcome of the hearing they were prepared to meet with the Police a regularly as they wished and to work pro-actively with them. In answer to further questions they explained that no one had been permitted into the premises after the terminal hour as it currently existed once their errors had been pointed out to them and that only staff had been observed in the premises in the process of cleaning and disposing of rubbish. The applicants also detailed the precise area that was used in association with the current business, it was significantly smaller than set out on the submitted plans. The applicants also confirmed that having relocated from London this was their sole business, they were not operating any other premises from any other address.

Closing Submissions/Summaries

- 39.21 The Licensing Officer, Mark Savage-Brookes made his closing submission stating that the Panel needed to determine the application based upon the information provided in the officer report, in the representations received and during the course of the hearing itself. Each application needed to be considered on its individual merits and in instances where an application fell within the CIZ it needed to be considered in the context of the special policy on cumulative impact, where there was a presumption of refusal unless it was considered that reasons had been given which represented an exception and justified a departure from policy. Exceptional circumstances did not include the quality of management or size of the venue, except where explicitly stated in the policy matrix. Exceptional circumstances could include consultation with and meeting requirements of responsible authorities, an appropriate corporate social responsibility policy and community contribution to off-set impact for example. Any decision taken and/ conditions added were required to be enforceable and proportionate.
- 39.22 Each of the parties had the opportunity to make a closing submission and re-iterated the points which they had made earlier in the meeting.

Decision

- 39.23 The Panel's decision was as follows:

The Panel have read and considered all of the papers circulated and the relevant representations and listened carefully to the submissions made.

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. The application proposes takeaway premises with late night refreshment from 23:00 to 04:00 every day.

The council's policy on cumulative impact 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. Our policy recognises that different premises may have different levels of impact depending upon their style and characteristics. This is further reflected in the Matrix approach in the policy which indicates a "no" for late night takeaways in the CIZ.

The representations from the Police and Licensing Authority, express concerns about the location of the premises within the CIZ and the additional negative cumulative impact such a premises is likely to have especially as regards effective dispersal from the night-time economy. Preston Street is within the area of "Operation Marble" and there are often dispersal orders in place in the area.

The applicants' stress that they are a small premises and believe that their presence on Preston Street where people come for food would aid dispersal and alleviate queuing pressures. They sell no alcohol and provide a free soft drink with every meal which helps soak up the alcohol. They are anxious to open after 11pm but would be willing to accept earlier closing times for instance 1.30 or 2am. They have CCTV already but would agree to the police standard condition, and would agree to other conditions suggested by the police such as signing up to the services of a mobile support unit.

The Panel have considered the individual circumstances of this case as well as the policy context. The Panel appreciate the concerns of the responsible authorities and the situation that the applicants find themselves. The Panel note that the applicants are willing to comply with the requirements of the police in terms of suggested conditions and others canvassed by the Panel.

39.24 The Panel therefore decided to grant a reduced licence and the terms of this are set out below:

39.25 **RESOLVED** – The Panel has therefore decided to grant a reduced licence so that the premises will be permitted to operate late night refreshment on Thursday, Friday and Saturday nights from 23:00 hours to 01.30 only with opening hours to match. There will be no licensable activities on other days of the week. It was established during the hearing that the licenced area is just the ground floor and does not also include the basement as shown on the plan so the licensed area shall be confined to the ground floor. The grant is subject to the following conditions being out onto the licence:

1. (a) Digital CCTV and appropriate recording equipment to be installed in accordance with Home Office Guidelines relating to UK Police Requirements for Digital CCTV System (PSDB Publication Number 09/05), operated and maintained throughout the premises internally and externally to cover all public areas, including the entrance to the premises. The system shall be on and recording at all times the premises licence is in operation;

(b) The CCTV cameras and recording equipment must be of sufficient quality to work in all lighting levels inside the premises at all times;

(c) CCTV footage will be stored for a minimum of 31 days;

(d) The management will give full and immediate co-operation and technical assistance to the Police in the event that CCTV footage is required for the prevention and detection of suspected or alleged crime;

(e) The CCTV images will record and display dates and times, and these times will be checked regularly to ensure their accuracy;

(f) Subject to GDPR guidance and legislation, the management of the premises will ensure that key staff are fully trained in the operation of the CCTV, and will be able to download selected footage onto a disk (or other electronic portable device acceptable to Sussex Police);

(g) Any breakdown or system failure will be notified to the police immediately and remedied as soon as practicable;

(h) In the event of the CCTV system hard drive being seized as evidence as part of a criminal investigation by Sussex Police or for any other reason, the premises will be

expected to install a replacement hard drive or a temporary replacement drive as soon as practicable;

(2) The licence holders will sign up to the service of a Mobile Support Unit for assistance in the event of problems at the premises;

(3) The licence holders will display prominent notices in the premises reminding customers to respect local residents, keep noise down and leave quietly; and

(4) There will be no moped deliveries;

The Panel does appreciate the concerns of the Police and Licensing Authority with regard to dispersal and the policy but consider that this modest grant of 01.30 hours 3 days a week is not likely to add to negative cumulative impact or undermine the licensing objectives. The opening times are well within existing "Operation Marble" hours and the premises will not be open other days in the week for example on student nights and when there are less police resources. The premises are very small and the location on Preston Street is food led and is not a main dispersal artery. There have been no representations from local residents or councillors. The Panel wish to stress however that in their view a licence operating beyond the hour granted would not be acceptable and would be likely to add to pressures of cumulative impact.

Note: The Legal Adviser to the Panel explained that the applicants would receive a letter detailing the Panel's decision and setting out their appeal rights.

The meeting concluded at 11.35am

Signed

Chair

Dated this

day of