

**INDEPENDENT EXPERT REPORT FOR
BRIGHTON AND HOVE CITY COUNCIL
LICENSING SUB-COMMITTEE**

**BRIGHTON ZIP
MADEIRA DRIVE, BRIGHTON, BN2 1EN**

By Andrew Bamber

Dated: 24TH NOVEMBER 2021

Executive summary

The venue used to operate with a premises licence until August this year when an administrative oversight resulted in the licence lapsing.

Other than a very minor breach of the licence conditions, which was dealt with immediately by way of a warning letter, no other data or problems have been cited by the Sussex Constabulary.

There was a clear issue with staffing when the hospitality industry reopened for business. The Covid NHS app quickly identified individuals who had been in contact with people who had contracted Covid. The requirement for people to immediately isolate when notified left the venue short of staff. This particular problem is well documented and businesses across the country suffered the same short notice operating problems.

Apart from the Covid induced staff shortages the venue has operated within the cumulative impact zone without incident. In recent months the venue has opened with a number of temporary event notices and there have been no issues.

The police highlight that the venue is applying for a 'new licence' in a cumulative impact zone, and they cite the crime and disorder and public safety objectives as areas of concern for them.

The police have not set out the necessity and/or proportionality of their decision to object. Whilst it is a new licence the venue has operated with a licence for several years. The police representation states that the Public Health Framework document, referenced as part of the objection, highlights alcohol related crime. However, the

author of the document is careful to point out that the data set does not highlight that all crime referred to is alcohol related. The representation also links police resourcing to the crime and disorder and public safety objectives. In my experience police resourcing has never been grounds to object to an application for a premises licence.

By not setting out the necessity and proportionality elements in support of the decision to object to the licence it does not appear that the factors in paragraph 65 have been given any consideration to provide balance to the decision.

If I were to consider this application in my previous roles, notwithstanding that the venue sits within the cumulative impact zone, I would have considered the areas highlighted in paragraph 65.

I would have concluded that the operators have not negatively impacted on the cumulative impact zone, or the four licensing objectives in the past, and more recently a number of temporary event notices have operated without a problem. The operating schedule takes account of best practice highlighted in the statement of licensing policy, and the venue operators/staff are more than adequately trained. This is supported by excellent record keeping. On balance, having considered all of the elements of the application, I would not have objected to the venue being reissued with a new licence.

1. Introduction

2. I have been asked by Mr Niall McCann of Keystone Law to risk assess an application for a premises licence for the Brighton Zip, Madeira Drive, Brighton, BN2 1EN

3. My assessment is completely independent of my instructing solicitor and the owners and the managers of the venue. I have no personal involvement with the business nor any other business or resident in the area.
4. I am able to evaluate the operational environment based upon my considerable experience and qualifications. I can view the environment through several perspectives and make objective interpretations.
5. In brief I have been:
 - a licensing observation officer;
 - a divisional licensing Inspector in a busy and challenging London Borough;
 - the operations Chief Inspector responsible for policing Mayfair and Soho;
 - the operations manager for the central London Clubs and Vice unit with responsibility for the night-time economy;
 - a Detective Chief Inspector managing divisional crime investigations;
 - a Detective Superintendent (senior investigating Officer);
 - a Borough Commander responsible for developing and delivering local policing plans that include the night-time economy challenges; and
 - as an Assistant Director, for 10 years, on a semi-inner London Borough I was responsible for the Safer Communities portfolio that included the development and delivery of the Partnership Community Safety Strategy. I was directly responsible for the Licensing function and the night-time economy, problem solving local crime and ASB hotspots, and the development and management of Licensing policies.
6. I acknowledge that as an expert witness my primary duty is to the Licensing Sub-Committee. All facts identified in this report are true to the best of my knowledge and experience. They were either witnessed or experienced by me personally or relayed to me in good faith and appear to be credible and reliable.

7. The opinions I have expressed within in this report are honestly held and correct to the best of my judgement and belief. My fee for preparing this report is not conditional on the opinions I have stated within or the eventual outcome of the case.
8. Prior to my assessment I was provided with:
- proposed conditions;
 - written submission for TEN's;
 - Brighton Zip presentation;
 - training invoices;
 - menus;
 - a risk assessment for the 30th-31st October 2021;
 - dispersal policy; and
 - a series of emails between the Brighton Zip's legal representative and the police licensing officer.
9. In addition to the document review I conducted a covert assessment of the area and the operation of the venue. At the end of my assessment, I entered the venue and introduced myself and interviewed Redacted and Redacted. During the interview, I questioned them about the venue, its operation and customer profile, potential licence conditions and their licensing responsibilities. I inspected their training documentation/records and qualifications, a risk assessment, dispersal policy, menus, incident log and refusals log.
- 10. Representation of Sussex Police**
11. I am aware that Sussex Police have submitted a representation objecting to the granting of a new licence for the venue. The representation highlights:

- the cumulative impact area;
- that it is a new licence;
- the previous licence conditions;
- police resourcing;
- minor breaches of the previous licence (but not that the matter had been dispensed with by a warning letter); and
- that Queens Park Ward is ranked 3rd highest out of 21 wards for police recorded *alcohol related incidents*. However, in the opening paragraphs of the framework report the author highlights that not all crimes will be associated with alcohol *“It is important to note that the Police crime statistics used in this report are proxy indicators for alcohol related crime and will not all be alcohol related. These crime types have been chosen as they are most likely to be associated with alcohol”*.

12. **Visit (Saturday 6th November 2021)**

13. My visit to the area was dictated by the operation of a temporary event notice on a Saturday evening - the Guy Fawkes weekend.
14. I arrived in Brighton at 3pm so that I could assess the late afternoon environment of the Brighton Zip through to the late evening.
15. I initially walked the sea front, walking from the west past the British Airways i360 and beyond the pier, along Madeira Drive and past the Brighton Zip. I then walked back along Marine Parade and walked around The Lanes.
16. I gained the impression that the main area for licensed premises was north of Kings Road/Grand Junction Road and to the west of the pier. The area to the east of the pier

along Madeira Drive, Marine Parade and the streets running north from Marine Parade had relatively few licensed venues.

17. Having walked around the area I focused my attention on the Brighton Zip in Madeira Drive to the east of the pier.
18. Madeira Drive was closed off and there was a barrier system preventing vehicle access and the barriers ran some distance along each side of Madeira Drive.
19. The café area of the Brighton Zip sits at the base of the zip wire structure. It is on the south side of Madeira Drive and is a slightly elevated platform between the pavement and the beach. The café area is set out to tables, with a bar and kitchen to the rear of the venue (the beach side) as you step up onto the platform. Sitting in the café area you cannot see the beach; the only view is Madeira Drive, save for from a small roof terrace
20. The café area is covered but it is completely open on the west and north sides. The east side is partially closed to the elements and the south side contains the bar and kitchen.
21. Below the Zip Wire café is another bar unconnected to the zip wire complex. This bar sits at beach level, is open to the beach and has a significant number of tables set out along the beach front.
22. The following table sets out the times that I watched the Zip Wire restaurant/bar and the number of customers that were present.

Saturday the 6 th November 2021	
Times	Customers
16.30	Nil

17.00	Nil
17.30	Nil
18.00	Nil
18.30	Nil
19.30	6 adults and 1 child
20.00	5 adults
20.10	7 adults

23. On each occasion that I watched the venue the customers entered and walked to the café area and after a short conversation they were shown to a table where they sat and ordered either a drink or a meal or both. On each occasion service was provided at the table by a member of staff.
24. Just after 20.00 I entered the venue where the 7 adults were seated. I walked to the kitchen bar where 2 members of staff were standing, I introduced myself and asked to see either the manager or owner of the venue.
25. As I waited, I noticed several dog bowls on the floor around the venue and I could see a number of well-placed signs highlighting challenge 25 and that service is solely by waitress/waiter.



26. After about 10 minutes I was joined by a Redacted and Redacted.

27. During our conversation they explained the administration failure that resulted in the licence lapsing.
28. Redacted explained that at the time she was the new retail operations manager and explained that she had devised new a menu for the venue but was unaware of the requirement to have the menu printed with the table service condition on them.
29. At the meeting on the 12th August when this minor breach was pointed out she immediately reordered new menus. The paper and printing requirements meant that there was a 2-week lead in before they could be used. She pointed that she did not ignore the guidance given by the officer and set about rectifying the mistake immediately by placing the new order. Appreciating the delay, she printed up table notices with the condition so that customers would immediately know the requirement to order from the table.

**THE PURCHASE OF
ALCOHOL IS ONLY
ALLOWED AS AN
ANCILLARY TO
A TABLE MEAL AND
FOR CONSUMPTION
WHEN THEY ARE SEATED
AND WITHIN THE LOWER
DECKING AREA**

30. Both Redacted and Redacted explained the meeting that they had with a licensing officer on the 26th August 2021. It appears that plain clothes enforcement officers witnessed breaches of the licence conditions, where customers were seen being served alcohol from the bar and that they had not been served a meal.

31. Both explained the severe staff shortages that they had suddenly experienced due to Covid infections, the Covid app implications, and the Governments requirement that infected people, and those that had been in close contact with the infected person, must self-isolate immediately.
32. Like many other businesses across the country, they were trying to operate a business in extremely challenging, difficult, and unprecedented circumstances and that the operating environment changed rapidly.
33. I have seen a letter dated the 26th August, the same day as the meeting, sent by Mark Thorogood, a licensing officer from Sussex Police. It highlights that the matter was dispensed with immediately by way of a warning. The speed at which the warning letter was sent is an indication that the matter was not sufficiently serious enough to be dealt with any other way than by a warning.
34. That same day they received notification from the council that their premises licence had lapsed, and they immediately stopped trading.
35. Looking around the venue it was clear from the notices and the menus that the management of the venue had listened to the warning and had ensured that the notification to customers was very explicit.
36. Redacted then explained how she was re-engineering the ordering process. Staff now have handheld devices to order food and drink for customers and she is in the process of developing an ordering process where QR codes are used.
37. I then enquired about staff training and how management ensured strict compliance with the licence conditions.

38. They explained that 6 staff have now completed and passed the ARAR qualification, Level 1 Award in Responsible Alcohol Retailing (04/11/2021).
39. Redacted is APLH Qualified as of 23rd September 2021 and in the process of obtaining her personal licence.
40. The running manager is a personal licence holder.
41. Redacted is a personal licence holder and the DPS for the venue. He is booked to refresh his qualifications on 15th November 2021.
42. Sitting alongside the nationally recognised courses the company have their own training PowerPoint created and delivered by a training consultancy.
43. Before any staff member is allowed to prepare or sell drinks they must complete a 1-1 training session with the DPS or a trainer with a APLH 2021 qualification, the 1-1 session is supported by the training consultancy alcohol training PowerPoint.
44. At the conclusion of the training session the individual must then independently pass a 14-question test. If any questions are incorrect, they are revisited. Learning points within this training session. Include:
 - the four licensing objectives;
 - licensing legislation;
 - the defence of due diligence;
 - mandatory conditions;
 - annex 2 conditions;
 - protecting children from harm;
 - challenge 25;
 - identification;

- refusals and zip ride management; and
- offences.

45. I then checked the training documentation and found that everything that had been described to me was accurate. A record is kept of each member of staff. Each entry highlights the training input, the date of the training and the test paper is retained. In my experience I found the record keeping impressive and to an exceptionally high standard.
46. There was also a current incident log and a refusals register, new CCTV, risk assessments, a dispersal policy.
47. I asked about the dog bowls placed around the venue. Redacted explained that apart from the zip wire, their main trade came from dog walkers out on the beach front, families, and from elderly day trippers. She explained that coaches dropped off visitors in Madeira Drive and that the visitors came into the café on arrival and before they departed at the end of the day.
48. **Cumulative impact**
49. The venue has operated for several years with a premises licence, which, for administrative reasons, lapsed. The operators now find themselves having to apply for a new licence to continue their trade.
50. In the years that the venue has operated, other than a minor breach of a condition that was dealt with by a warning letter, no data or evidence has been produced to highlight that the venue has had a negative impact upon the four licensing objectives or the cumulative impact zone.

51. Since the lapse of the licence the venue has operated several TEN's which have not had a negative impact and demonstrate that the venue operators understand their responsibilities and the environment that they are operating in.
52. The application is for cafe. It is not a night club, nor is it a vertical drinking venue or a premium night-time economy destination. It is a mixed-use venue that caters for families, dog walkers, coach parties visiting Brighton, customers to the zip wire, and a passing seafront trade. It adds to the diversity of licensed premises to the north and west of the pier.
53. The view from the main cafe deck is Madeira Drive. It is not somewhere that will attract people sit and enjoy the view of the beach and the water's edge.
54. The operating schedule takes account of best practice measures in the statement of licensing policy, and the training of all staff is comprehensive with excellent record keeping.
55. **Conclusion**
56. The police representation appears to rely upon resourcing issues as the main grounds for their objection and linking it to the crime and disorder and public safety objectives.
57. Based upon my previous experience police resourcing issues have never been the bases on which to object to granting premises licences.
58. The resourcing issue is also linked to a Public Health framework document (2019) and the representation states that the data highlights 'alcohol related incidents' However, the author of the report very carefully sets out in the introduction that *"It is important to note that the Police crime statistics used in this report are proxy*

indicators for alcohol related crime and will not all be alcohol related. These crime types have been chosen as they are most likely to be associated with alcohol”.

59. The representation also mentions breaches of the conditions on the previous licence. However, it does not highlight that the matter was deemed to be a minor infringement that was dealt with by way of a warning that was administered on the same day. The swiftness of the warning is a clear indication of the minor nature of the infringement.
60. The officer issuing the warning letter did not include the reason for dispensing with the matter so speedily and with a warning. It is possible that he understood the unprecedented and unique circumstances that many businesses were experiencing with Covid 19 and the rapid and immediate requirement for people to self-isolate with warnings from the NHS app. The severe strain that businesses were under during that period is well documented.
61. It is also an indication that the officer did not feel that any of the four licensing objectives had been adversely impacted by the minor infringement.
62. No other data has been produced by any responsible authority to highlight that the venue, operating under its previous licence, had been a cause of concern, or had a negative impact upon the four licensing objectives.
63. When making a representation there is an expectation that the author of a representation sets out the necessity and the proportionality of the decision to object to a licence.
64. I have not seen any document or rationale setting out the necessity and proportionality of the decision to object to the licence.

65. However, were I to consider the same application in my previous roles, I would take the following into consideration when considering the necessity and proportionality of my decision:

- That the application is for a licence in a cumulative impact area.
- That it is not a new application per se. The venue had operated with a premises licence and that it was an administrative error that caused the previous licence to lapse.
- That as a previously licensed venue there are 50 members of staff dependent upon the venue.
- That there is no data that highlights that when operating under previous premises licence that the venue impacted upon the four licensing objectives.
- That there were breaches of the licence conditions in August 2021. These were minor breaches that were dealt with by way of a warning letter.
- That the breaches occurred in unique and unprecedented times when members of staff were either being infected with the covid virus or were being told to isolate because they had associated with somebody that had tested positive.
- That the isolation warnings were very short notice events that required immediate isolation that often left employers short of key staff.
- That the staffing problems associated with the NHS app were well documented and were country wide.
- That the management of the venue are acutely aware of their responsibilities to the four licensing objectives.
- That the operators have managed the site for 11 years and there is no adverse comment from the police about those 11 years.
- Temporary event notices have been operating at the venue without having a negative impact on the area or the licensing objectives.
- The DPS has completed refresher training for his personal licence.
- The general manager and the shift manager now hold personal licences.

- Staff involved in the bar/kitchen have undertaken the ARAR qualification, Level 1 Award in Responsible Alcohol Retailing.
- The training regime is comprehensive, accountable, with excellent record keeping.
- That the signage in the venue is clearly displayed and leaves no room for misinterpretation.
- The new menus are available and clearly highlight the requirement for table service.
- The venue is not a vertical drinking establishment, nor is it a night club. It a mixed-use sea front venue that is frequented by elderly day trippers, dog walkers, families and passing sea front trade.

66. I would conclude that, notwithstanding that the venue sits within the cumulative impact zone, the operators have not presented a problem that negatively impacted on the cumulative impact zone or the four licensing objectives, and more recently a number of temporary event notices have operated without a problem. The operating schedule takes account of best practice highlighted in the statement of licensing policy, and the venue operators are more that adequately trained. This is supported by excellent record keeping.

67. Therefore, on balance, I would not have made a representation to object to the licence, and I would have worked with the operators to ensure that the most appropriate licence for the area was agreed with the most appropriate licence conditions.

Ramber

24th November 2021