

Licensing Panel (Licensing Act 2003 Functions)

Brighton & Hove City Council

Subject:	Application for a New Premises Licence under the Licensing Act 2003		
Premises:	Elate Restaurant 21 Marine Drive Rottingdean Brighton BN2 7HJ		
Applicant:	Isufaj Dritan		
Date of Meeting:	20 July 2023		
Report of:	Executive Director of Housing, Neighbourhoods & Communities		
Contact Officer:	Name:	Donna Lynsdale	Tel: (01273) 292494
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Ward(s) affected:	Rottingdean & West Saltdean		

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 To determine an application for a New Premises Licence under the Licensing Act 2003 for Elate Restaurant.

2. RECOMMENDATIONS

- 2.1 That the Panel determine an application for a New Premises Licence under the Licensing Act 2003 for Elate Restaurant.

3. CONTEXT/BACKGROUND INFORMATION & CONSULTATION

- 3.1 The application is for a New Premises Licence under the Licensing Act 2003. The application proposes to operate as a restaurant. The applicant wishes to serve alcohol 'on' the premises. A broad option of soft drink menu will be supporting the main menu and alcohol will be an option that will be served along with a table meal only by waiter or waitress.
- 3.2 Section 18 (operating schedule) of the application is detailed at Appendix A and the plan of the premises is attached at Appendix B.

3.3 Summary table of proposed activities

	Proposed
Supply of Alcohol	Everyday 11:00 – 22:30 On sales
Hours premises are open to public	Everyday 08:00 – 23:00

3.4 The premises does not fall in the Cumulative Impact Area or the Special Stress Area.

Representations received

3.5 Details of the representations made are notified to applicants on receipt by the Licensing Authority using pro-forma. A summary appears below:

3.6 4 representations were received. They were received from local residents, Parish Council and a local Councillor.

3.7 Representations received had concerns relating to Prevention of Crime and Disorder, Prevention Public Nuisance, Public Safety and Protection of Children from Harm.

3.8 An agreement was reached between the applicant, Sussex Police and Environment Protection, details of which can be found at Appendix C. Full details of the representations are attached to Appendix D. A map detailing the location of the premises is attached at Appendix E.

4. COMMENTARY ON THE LICENSING POLICY

4.1 The following extracts from Brighton & Hove City Council Statement of Licensing Policy are considered relevant to this application and **are numbered as they appear in the policy**:

1 Introduction

1.1 This Statement of Licensing Policy has been prepared in accordance with the provisions of the Licensing Act 2003 (the Act) and having regard to Guidance issued by the Home Office under Section 182 of the act. This policy takes effect from the 4th February 2021. The licensing authority is Brighton & Hove City Council. The purpose of this statement is to promote the licensing objectives and set out a general approach to making licensing decisions. The discretion of the licensing authority in relation to applications under the act is only engaged if 'relevant representations' are made by other persons or responsible authorities. This policy will inform the approach to be taken when deciding applications and imposing conditions when relevant representations are received. It is also intended as a guide for applicants as to what to include in their operating schedules, always recognising that if no representations are received, the application must be granted. The licensing authority must carry out its functions with a view to promoting the licensing objectives and this policy is framed around those objectives. Each

application will be given individual consideration on its merit. The scope of this policy covers the following:

- Retail sales of alcohol.
- The supply of alcohol by or on behalf of a club, or to the order of, a member of the club.
- The provision of regulated entertainment.
- The provision of late-night refreshment.

1.2 The licensing objectives are:

- (a) the prevention of crime and disorder.
- (b) public safety.
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.

1.3 Scope

1.3.1 Licensing is about regulating licensable activities on licensed premises, by qualifying clubs and at temporary events. Any conditions attached to various authorisations will be focused on matters which are within the control of individual licensees and others with relevant authorisations, i.e., the premises and its vicinity. Each application will be given individual consideration on its merit. Nothing in this policy shall undermine the right of any individual to apply under the terms of the act for a variety of permissions and to have any such application considered on its individual merits. Similarly, nothing in this policy shall override the right of any person to make representations on an application or seek a review of a licence or certificate where provision has been made for them to do so in the act.

3 Special Policies and Initiatives

3.3 The Matrix Approach

The Licensing Authority will support:

3.3.1 Diversity of premises: ensures that there is a mix of the different types of licensed premises and attracts a more diverse range of customers from different age groups, different communities and with different attitudes to alcohol consumption. It gives potential for positively changing the ambience of the city or an area of it. This will have a positive effect in reducing people's fear of crime and in increasing the number of evening visitors to the city centre. The Community Safety Strategy recognises that too many single uses in a confined area and patrons turning out onto the streets at the same time may create opportunities for violent crime and public disorder and therefore supports mixed use venues encouraging a wider age balance.

3.3.2 A "matrix" approach to licensing decisions has been adopted and is set out below. It provides a framework of what the licensing authority would like to see within its area and gives an indication of the likelihood of success or otherwise to investor and businesses making applications.

Matrix approach for licensing decisions in a Statement of Licensing Policy (times relates to licensable activities)

	Cumulative Impact Area	Special Stress Area	Other Areas
Restaurant	Yes (midnight)	Yes (midnight)	Yes (midnight)
Café	Yes (10 pm)	Yes (10 pm)	Yes (10 pm)
Late Night Takeaways	No	Yes (midnight)	Yes (midnight)
Night Club	No	No	No
Pub	No	Yes (11pm)	Yes (midnight)
Non-alcohol lead (e.g. Theatre)	Yes (favourable)	Yes (favourable)	Yes (favourable)
Off-licence	No	No	Yes (Up to 11pm but if in densely residential area may be earlier – see note 7 below)
Members Club (club premises certificate)	Yes (<100 capacity) (11pm)	Yes (<100 capacity) (11pm)	Yes

Notes on matrix

Subject to the following notes, the policy, as represented in the matrix, will be strictly adhered to:

- 1) Each application will be considered on individual merit
- 2) Applications within the CIZ are subject to the special policy on cumulative impact at para 3.1, and those within the special stress area to the special stress policy considerations at para 3.2.
- 3) Departure from the matrix policy is expected only in exceptional circumstances
- 4) Exceptional circumstances will not include quality of management or size of venue except where explicitly stated in policy matrix.
- 5) Exceptional circumstances may include: consultation with and meeting requirements of responsible authorities, an appropriate corporate social responsibility policy, community contribution to offset impact (such as financial contribution to infrastructure), community support, alcohol sale ancillary to business activity (demonstrable to responsible authorities and licensing authority, for instance

by licence condition allowing authorised officers access to sales accounts).

6) The following licensing activities are encouraged and valued by the licensing authority: outdoor regulated entertainment, community-based street parties, members clubs, traditional pubs outside the city centre and non-alcohol led licensable activities, particularly within city centre.

7) Other Areas; consideration will be given to the nature of the area and location in relation to any application. In a residential area for example the concerns of local residents will be relevant when considering applications for off-licences, pubs or cafes, especially if there is evidence of anti-social behaviour, street drinking or underage drinking. Earlier closing times may be appropriate. Regard will be had to the Public Health Framework for assessing alcohol licensing on our website www.brighton-hove.gov.uk/licensingact.

8) In an area where there are already several existing off-licences or where the premises is situated within a parade with another off licence and where representations are received about negative cumulative impact on the licensing objectives of a further premises, the application may be refused on these grounds or restrictions placed on the terminal hour to reflect opening hours of other shops.

9) Outdoor events will be supported where arranged through the council's event planning process. Generally, regulated entertainment in the open-air including tents and marquees should have a maximum closure hour of 2300. Earlier hours may be imposed in sensitive open spaces or near residential areas. The licensing authority will have regard to Noise Council guidance.

10) Non-alcohol led category does not include "alcohol in shared workplaces". It is recommended that sale of alcohol in shared workspaces should have a terminal hour of no later than 10pm. For further advice and guidance on "alcohol in shared workplaces" please see paragraph 3.3.4-3.3.6.

3.3.3 Cafes - the licensing authority may be prepared to look favourably upon an application for the grant of a licence, subject to the following conditions that will prevent the premises becoming a public house.

- The sale of intoxicating liquor and other beverages shall be waiter/waitress service for consumption by persons seated at tables.
- Substantial food shall be available at all times. The licensing authority shall judge each case on its own merits but as a general rule, a bowl of crisps, nuts, or olives does not constitute substantial food.

3.3.3 Restaurants - the licensing authority may be prepared to look favourably upon an application for the grant of a licence, subject to the following restaurant condition.

- Intoxicating liquor shall not be supplied or sold on the premises otherwise than to persons taking table meals there and for the consumption by such a person as an ancillary to their meal. There will be no vertical drinking.
- Restaurants with outside service - the licensing authority will also consider applications from restaurants that request to serve alcohol to areas adjacent

to or immediately outside their premises. In addition to the above conditions for cafes, the licensing authority will require evidence that the applicants have an agreement with the local authority to use the area as defined on a plan provided. The following condition may also apply:

- The sale and supply of alcohol for consumption off the premises shall be restricted to an area licensed by the Local Authority for use of the public highway as shown on the plan deposited and such area shall be defined by a physical barrier acceptable to the licensing authority.

4 Prevention of Crime and Disorder

The following details and measures are intended to address the need for the prevention of crime and disorder which may be associated with licensed premises and certificated club premises. Conditions attached to licences and certificates will, as far as possible, reflect local crime reduction strategies.

4.1.1 The licensing authority acknowledges that training and good management play a key part in preventing alcohol and drug related crime. The authority expects that all licensees of on-licensed premises attend training programmes which will raise their awareness of the issues relating to drugs and violence in licensed premises, and that suitable training be extended to all bar staff and door supervisors so that drug dealers and users will be deterred from using licensed premises for illegal purposes and that incidents of violence in licensed premises will be reduced. Licensees are also encouraged to attend training programmes to help identify children at risk and issues of basic child protection. It is the duty of the designated premises supervisor (DPS) to train staff on induction concerning conditions on their premises licence.

4.1.2 It is expected that the DPS will spend a significant amount of time on the premises. When not on the premises it will be essential that the DPS is contactable, particularly should problems arise with the premises and that staff are authorised by the DPS.

4.1.3 The location of violent attacks, anti-social behaviour and hate crime or related incidents may be used to justify closing times.

5 Public Safety

The following details and measures are intended to address the need for the protection of public safety which may be associated with licensed premises and certificated club premises.

5.1.1 The permitted capacity is a limit on the number of persons who may be on the premises at any time, following a recommendation by the relevant fire and rescue authority under the Regulatory Reform (Fire Safety) Order 2005. For any application for a premises licence or club premises certificate for premises without an existing permitted capacity where the applicant wishes to take advantage of the special provisions set out in section 177 of the 2003 Act, the applicant should conduct their own risk assessment as to the appropriate capacity of the premises. They should send their recommendation to the fire and rescue authority which will consider it and decide what the "permitted capacity" of those premises should be.

5.1.3 Conditions may be imposed in accordance with operating schedules to protect public safety including where justified:

- (a) provision of closed-circuit television and panic buttons.
- (b) use of shatterproof drinking vessels; bottles requiring use of toughened glass or plastic should normally be required unless applicants can show exceptional reasons.
- (c) use of door supervisors, licensed by the Security Industry Authority.
- (d) requirement of a minimum of a licensed door supervisor for every 100 customers in nightclubs and large city centre pubs or as indicated by risk assessment.
- (e) occupant capacity conditions will be applied where appropriate.
- (f) the provision of designated and suitably trained first aiders.

6 Prevention of Public Nuisance

The following details and measures are intended to address the need for the prevention of public nuisance which may be associated with licensed premises and certificated club premises:

6.1.1 In determining applications for new and varied licences, regard will be had to the location of premises, the type and construction of the building and the likelihood of nuisance and disturbance to the amenity of nearby residents by reason of noise from within the premises, as a result of people entering or leaving the premises or from individuals or groups of customers gathered outside (eg in order to smoke).

6.1.2 Applications for new licences or for the extension in size of licensed premises should not normally be granted if the premises will use amplified or live music and operate within or abutting premises containing residential accommodation except that occupied by staff of the licensed premises. A condition may be imposed on new licences that entertainment noise shall be inaudible in any residence. Noise emanating from within licensed premises should not normally be audible outside.

6.1.5 In determining applications for new licences or extensions in hours or terminal hours of licensed premises, regard will be had to late night public transport availability and location of taxi ranks to aid dispersal of customers.

6.1.6 Reasonable controls are available to all premises operators to minimise the impact of noise from customers outside. The council's Environmental Health Department has issued guidance on a number of steps that can be taken in this respect which are endorsed by this policy (see 6.2 below).

6.2 Smoking Advice

6.2.1 Premises licence holders will be expected to:

- Develop a management plan on how to manage smoking on your premises and ensure that all staff are aware of the contents of this plan, and that it is effectively implemented. Noise from people smoking and talking can be intermittent, vary in

character and volume and be intrusive. An effective smoking management plan will help prevent neighbours being disturbed.

- Comply with any planning conditions restricting the use of outdoor areas.
- Ensure that any structures used by smokers comply with the design criteria detailed in the Heath Act 2006 and that any structures, awnings, retractable canopies, etc. have the relevant planning permission.
- Ensure any new lighting to outdoor areas must be designed so as not to cause a light nuisance to neighbours and again have the relevant planning permission and building control consent.
- Ensure that the conditions on the premises licence are complied with. There may be conditions restricting the hours of use of gardens and outdoor areas. Having reviewed the contents of the premises licence you may find it necessary to request a variation of your licence.
- Licence tables and chairs on the Public Highway under the provisions of the Highways Act 1980. These licences may have conditions restricting the times that the area can be used.
- Ensure drinks, glasses and bottles are not taken onto the highway unless there is a tables and chairs licence permitting use. A system should be adopted to prevent theft and 'spiking' of drinks and reminding customers not to leave unattended items.
- Discourage smokers remaining in gardens and outdoor areas and determine terminal hours.
- Discourage smokers remaining outside by removing/disabling tables and chairs or prohibiting their use after a certain time. Lights and heaters will also be turned off.
- Introduce a system that after a certain time the number of smokers outside are restricted to a maximum number. Staff will be needed to manage this restriction.
- Employ staff and/or SIA registered door supervisors to manage doors and control customers and smokers entering and leaving the premises. Staff positioned on the doors can help to encourage customers not to cause a noise problem. It may be that staff are required to manage doors after a certain time, particularly during the hours when neighbouring residents are trying to sleep.
- Ensure door supervisors maintain order outside venues and protect customer safety. BCRP supports the use of Night Safe. Radio net and other pager systems and pub watch schemes can be used to provide for rapid police response and alert other venues where customers and staff are endangered.
- Position signs to remind customers that the premises is in an area where people live. It is not always obvious in busy commercial streets with flats above. By changing the design and wording of signs customers do not forget. Signs can be located in and outside the premises and on tables.
- Use CCTV to manage outside areas.

6.2.2 Licensed premises should normally display prominent, legible signs at exits reminding customers to leave in a quiet, peaceful, orderly manner.

7 Protection of Children from Harm

The following details and measures are intended to address the need for the protection of children from harm; this includes emotional and physical harm which may be

associated with licensed premises and certificated club premises (for example the exposure too early to strong language and sexual expletives, eg in the context of film exhibitions or where adult entertainment is provided). It is intended that the admission of children to premises holding a premises licence or club premises certificate should normally be freely allowed without restricting conditions (unless the 2003 Act itself imposes such conditions or there are good reasons to restrict entry or to exclude children completely).

7.1.1 Licensees should note the concern of the authority that drink related disorder frequently involves under 18's. To prevent illegal purchases of alcohol by such persons, all licensees should work with a suitable 'proof of age' scheme and ensure that appropriate identification is requested prior to entry and when requesting alcohol, where appropriate. Appropriate forms of identification are currently considered to be those recommended by police, trading standards officers and their partners in the Licensing Strategy Group (eg passport, photo driving licence or pass card).

7.1.2 It is the licensing authority's expectation that all staff responsible for the sale of intoxicating liquor receive information and advice on the licensing laws relating to children and young persons in licensed premises. Licensed premises staff are required to take reasonable steps to prevent underage sales. The licensing authority will not seek to limit the access of children to any premises unless it is necessary for the prevention of emotional or psychological harm to them. Each application will be considered on its own merit but particular areas that will give rise to concern in respect of children are to be found in section 7.1.4 below.

7.1.3 To reduce alcohol-induced problematic behaviour by under 18 year olds, to enforce underage purchase and drinking laws and to assist in the protection of children from harm, the licensing authority supports the following measures:-

- a) Police should exercise powers (Confiscation of Alcohol (Young Persons) Act 1997) to remove alcohol from young people on the street
- b) Police and trading standards should implement test purchasing to reduce sales to under 18s in on and off sales licensed premises
- c) Further take-up of proof of age schemes will be promoted
- d) In-house, mystery shopper type schemes operated by local businesses will be supported
- e) Providers of events specifically catering for unaccompanied children should consider whether all staff at such events need to be DBS checked

7.1.4 The licensing authority will not seek to require that access to any premises is given to children at all times – under normal circumstances this will be left to the discretion of the licensee. The following areas give rise to concern in respect of children, who will normally be excluded from premises:

- where there have been convictions for serving alcohol to minors or with a reputation for underage drinking.
- with a known association with drug taking or dealing.

- where there is a strong element of gambling on the premises.
- where entertainment of an adult or sexual nature is commonly provided.
- where premises are used primarily or exclusively for the sale and consumption of alcohol and there is little or no seating for patrons.

Options may include:

- limitations on the hours when children may be present.
- age limitations (below 18).
- limitations or exclusions when certain activities are taking place.
- requirements for an accompanying adult.
- full exclusion of people under 18.

7.1.7 Trading standards and the police undertake ongoing enforcement operations around under-age sales and test purchasing. Sussex Police and BCRP undertake work concerning proxy purchases and counterfeit ID as part of the partnership support work with Community Safety and Trading Standards.

7.1.8 Trading standards have a programme of business support including training for local businesses to avoid under-age sales.

8 Integration of Strategies

8.1.1 The licensing authority shall secure the proper integration of this policy with local crime prevention, planning policy, transport, tourism and cultural strategies by:-

- Liaising and consulting with the Sussex Police, Community Safety Forum, Sustainability Commission representatives and following the guidance in community safety and crime and disorder strategy
- Liaising and consulting with Public and Alcohol Programme Board
- Liaising and consulting with the East Sussex Fire & Rescue Service
- Liaising and consulting with the Local Strategic Partnership, Safety Advisory Group (Emergency Planning) and Equalities and Social Justice Consultation Forum
- Liaising and consulting with the Planning authority
- Liaising and consulting with the Highways authority
- Liaising and consulting with local business and business associations. Having regard to any future documents issued relating to the Private Security Industry Act 2001, for example liaison or information sharing protocols
- Liaising and consulting with the Trading Standards Team, for example with regard to test purchasing codes of practice

8.1.2 In line with statutory requirements and the council's Inclusion Policy, the Licensing Authority shall have due regard to the need to eliminate unlawful discrimination, and to promote equality of opportunity and positive relations between persons of diverse backgrounds, for example communities of interest such as: lesbian, gay, bisexual and transgender people; disabled people; racial and ethnic groups; religious and faith groups.

8.1.3 This policy supports the aims of the tourism strategy, recognising the benefits for the tourism economy of creating a safer and more attractive city centre and improving competitiveness with other European cities. The Licensing Committee

should receive any reports relevant to the needs of the local tourist economy and the cultural strategy for the area to ensure that it considers these matters.

8.1.4 The Licensing Committee should receive relevant information relating to the employment situation of the area and the need for new investment and employment where appropriate.

8.1.5 Specific conditions may be attached to premises licences to reflect local crime prevention strategies. Such conditions may include the use of closed circuit television cameras, use of the NightSafe radio system or accredited scheme, the provision and use of shatterproof drinking receptacles, drugs and weapons search policy, the use of registered door supervisors, specialised lighting requirements, hours of opening. Certificates issued to club premises shall reflect local crime prevention strategies and may include any or all of the requirements listed above.

8.1.6 The licensing authority will have regard to the need to disperse people quickly and safely from the city centre to avoid concentrations which may produce disorder and disturbance.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

5.1 The Licensing Act 2003 provides for fees to be payable to the licensing authority in respect of the discharge of their functions. The fee levels are set centrally at a level to allow licensing authorities to fully recover the costs of administration, inspection and enforcement of the regime.

Finance Officer Consulted Michael Bentley

Date 10/07/23

Legal Implications:

5.2 The licensing authority must act to promote the four licensing objectives which are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

The licensing authority must have regard to its statement of licensing policy and the guidance issued by the Secretary of State in carrying out its functions.

Lawyer Consulted: Rebecca Sidell

Date: 06/07/23

Equalities Implications:

5.3 Diversity is valued and strong, safe communities are vital to future prosperity. Licensing policy aims to protect children from harm including sale and supply of alcohol to children.

Sustainability Implications:

- 5.4 Licensing policy aims to prevent public nuisance and develop culture of live music, dancing and theatre.

SUPPORTING DOCUMENTATION

Appendices:

1. Appendix A – Section 18 (operating schedule) of the Application
2. Appendix B – Plan of Premises
3. Appendix C – Agreement of conditions between Police, Environmental Protection and Applicant
4. Appendix D – Representations
5. Appendix E – Map of area

Documents in Members' Rooms

Brighton & Hove City Council, Licensing Act 2003: Statement of Licensing Policy 2021.

Home Office, Revised Guidance issued under section 182 of the Licensing Act 2003, December 2022.

Public Health Framework for Assessing Alcohol Licensing – January 2022.

Background Documents

Brighton & Hove City Council, Licensing Act 2003: Statement of Licensing Policy 2021.