

LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS) ADDENDUM 1

10AM, THURSDAY, 29 APRIL 2021

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ADDENDUM

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APPLICATION TO VARY A PREMISES LICENCE

THE SHELTER HALL, 152 – 154 KING’S ROAD ARCHES, BRIGHTON, BN1 1NB

APPLICANT SUBMISSIONS

INTRODUCTION

1. The premises is a seafront food hall featuring a rotation of fledgling Sussex chefs. The premises’ grand opening in 2020 was interrupted by the Covid-19 pandemic.
2. The objective of the variation application is to give the applicant some limited flexibility to (a) help the business survive; (b) allow the applicant to quickly adapt to any current or future Covid-19 safe procedures; and (c) to promote a more civilised and premium offer within the seafront terrace area.
3. The applicant refers to the supporting material submitted with the application for further information about the business foundations, concept and objectives. The applicant was selected by Brighton and Hove City Council to refurbish and occupy the iconic building in 2019. The applicant is committed to safeguarding the business model approved by the Council during the vetting process. In doing, so the applicant can continue to provide an attractive and safe environment on Brighton’s seafront for local people and visitors to enjoy.
4. The application is made to help achieve this goal by varying a number of existing licence conditions. There is absolutely no intention to change the business model, nor transform the premises into a wet-led vertical drinking venue or similar. The premises will continue to operate as a food hall controlled by extant licence conditions not subject to change.
5. The business concept will remain centred around providing local chefs and food entrepreneurs an accessible platform to launch their concepts. This helps young chefs and restaurateurs test their business in fully equipped premises with flexible rental terms before taking the decision to commit to more expensive and longer-term leases in traditional ‘bricks & mortar’ sites elsewhere.

THE APPLICATION

6. The application does not propose any changes to the existing licensable activities, authorised hours or increase in capacity.
7. The application proposes to vary the existing Premises Licence as follows:

Part A – Change to Layout

8. Regularise changes to the authorised layout of the premises in accordance with the plans appended to the application. The changes include, *inter alia*:
 - a. Increase in size of one of the kitchens on the ground floor.
 - b. Removal of bar on first floor.
 - c. Reconfiguration of first floor toilet block adjacent to Private Dining Room and associated changes to Private Dining Room location and seating layout.
9. The changes to layout do not result in any increase in overall licensed areas nor the introduction of new bars. In fact, there is a proposal to remove one of the bars and increase the overall kitchen space, giving greater emphasis to food.

Part B – Changes to Operating Schedule of Conditions

10. The application proposes to amend 3 existing Premises Licence conditions, as follows:
11. Condition 2:

The Premises will at all time remain "food led" but alcohol sales shall be permitted as follows:

Substantial ~~hot~~ food will be available from not less than 2 3 of the 7 kitchen serveries until not more than 60 minutes before the projected time for the cessation of alcohol sales and there will be at least 1 kitchen service available until not less than 30 minutes before the cessation of alcohol sales.

Excluded from this is when an exclusive pre booked invitation only party or event is taking place ~~within the Private Dining or Function room shaded orange on the submitted plans or within the first floor area~~. This exclusion will only apply to the area (room/s) that have been

reserved for the particular party/event. The Licensee will provide not less than 10 days written notice of their intention to hold such an event to the Licensing Authority and to Sussex Police - such notice to specify the area to be used for such private party or event, the date, timings and the nature of such party or event, alcohol sales being limited to within such specified area only.

12. The premises will remain food led in accordance with the existing condition wording. There is absolutely no intention to transform the premises into bar or drinking establishment.
13. The proposed changes to condition 2 will help the applicant better manage the food traders throughout the course of an evening. Most customers have eaten earlier in the evening, meaning there is less demand for food later on. The current condition places a burden on some of the fledging food traders, effectively forcing them to stay open later when the demand is not there. As part of the all-day offer, the applicant has given some spaces to chefs with food concepts more suited to earlier parts of the day, for example a salad and juice kitchen and a coffee and cake kitchen.
14. This is not to say there will not be food available, or that there is any intention to become a bar later at night. There will still be plenty of food on offer for persons who still want to eat, while at the same time not forcing food traders to remain open when most customers have already enjoyed their meal on the premises.
15. The variation also proposes to remove references to areas not labelled on the new layout plans. This relates to pre-booked private functions or events, which may not necessarily take place in the areas previously labelled Private Dining Room or Function Room on the original Premises Licence plans. These events will be bona fide private pre booked functions or events. They will be occasional only. The applicant does not propose to remove the requirement to notify the Sussex Police in advance of such events in order to ensure and continue a close working relationship with the Police.
16. The applicant is grateful for the Police's confirmation that there is no objection to the removal of the word 'hot' from this condition.
17. Condition 4(a):

in the internal ground floor area edged red provided:

*a) There shall be tables and not less than 200 seats available **except for during pre-booked***

~~private functions or events organised in accordance with condition 2 together with not less than 20 covers on high "poseur" tables.~~

18. The proposal to amend condition 4(a) would allow more guests to stand during occasional bona fide private pre booked functions or events, which would be subject to a prior notification process with the Police as per condition 2 above. It would not apply to day-to-day use, where significant customer seating will continue to be maintained consistent with the food hall use of the premises.

19. The variation also proposes a further amendment to condition 4(a) relating to the requirement to maintain 20 moveable poseur tables. It is not the intention to clear these tables to make room for significant vertical drinking. These tables may remain or be re-introduced in the future. Strict requirements on maintaining furniture in this way proved a complication during social-distancing requirements in 2020. The applicant seeks some flexibility to allow it to pivot and adapt to the prevailing Covid-19 rules and guidance, particularly if there are any setbacks during the pandemic recovery period.

20. Condition 4(b):

Upon the external terrace area edged green provided.

b) Tables and seating for not less than 100 customers will be provided - which shall be either secured ~~and rendered unusable to the floor~~ or removed to secure storage when not in use.

21. This proposal seeks to vary the requirement for external furniture to be fixed to the ground. The amended wording would instead allow tables and chairs to be secured and rendered unusable when not in use, rather than a strict requirement to be fixed to ground.

22. The applicant understands that there is no objection to this element of the application.

23. Condition 20:

~~20. All alcohol sold for consumption outside on the front terrace area will be served in cans or shatter proof receptacles - Staff will patrol the terrace area to ensure that alcohol sold inside the premises in glass containers is not taken outside the designated terrace area. Alcohol sales within the premises will be permitted in glass containers subject to the Licensee's risk assessment. When such assessment requires it sales within the premises will also be in cans or shatterproof containers only.~~

24. This proposal seeks to replace the restriction on the use of glassware on the ground floor terrace with a requirement that the Premises Licence holder risk assesses and supervises the use of glassware on the ground floor terrace.

25. The success of this element of the application is of paramount importance for the applicant. The applicant hopes to achieve the following if this element of the application is successful:

The Environment

26. The applicant purchased a significant amount of polycarbonate drinking containers before opening in 2020 in order to comply with condition 20. The table below illustrates the amount of plastic waste following just 119 days of trading on the terrace. The waste was caused by breakages and general durability issues with the polycarbonate product:

Container	Waste
Polycarbonate Pint Glass	860 units
Polycarbonate Half Pint Glass	158 units
Polycarbonate High Ball Glass	310 units
TOTAL	1328 units

27. A significant amount of wastage also resulted from damaged polycarbonate wine glasses and flutes, although the applicant does not have the precise numbers available.

28. The use of this much plastic does not sit well with the applicant, which is an environmentally conscious business seeking to adopt and promote a minimal waste culture and environmentally friendly practices. The applicant refers to the supporting material, which includes details of the premises' flooring made from 98% recycled materials, use of melamine crockery, coffee cups made from recycled waste coffee husks and an ambition to eliminate single use plastic from the premises.

Improving the Standard of Offer on Brighton & Hove's Beachfront

29. The applicant is concerned that the enforced use of plastic and shatter proof containers on many existing and all new beachfront terraces will stifle a wider improvement of Brighton's beachfront. The systemic use of plastics is not only bad for the environment but also inhibits any realistic prospect of improving the standard offer on Brighton's beachfront.
30. Premises providing drinks in plastic containers with no opportunity to serve a customer a glass bottle of wine or champagne at their table have little or no chance of successfully transitioning away from a typical venue associated with cheap price alcohol and irresponsible drinks promotions, that are often targeted by problem drinkers and occasions such as hen/stag events. This is of particular relevance to the applicant who wishes to support local Sussex vineyards, which produce a higher quality but also more expensive product that customers would not order if served in plastic.
31. The applicant has big ambitions for Shelter Hall. It hopes Shelter Hall can become an iconic destination venue on the beachfront that the whole of Brighton can be proud of. The applicant wants to provide a premium yet accessible, safe and family friendly venue. This will be difficult to achieve if a more mature and responsible clientele are unlikely, or even unwilling, to order from a premium drinks menu which must then be consumed on the terrace in a plastic container or bottles of wine/champagne cannot served at their table.
32. Providing a higher standard of offer and premium product range will also help the applicant continue to pay its staff the national living wage.

Safety

33. The applicant does not seek to rule out the use of plastic or shatter proof drinking containers entirely. The proposed amendment to condition 20 places an obligation to continually risk assess the requirement to use plastic or shatterproof containers. The risk assessment will help the applicant to determine when it is appropriate to switch to plastic in order to promote the public safety licensing objective. For example, plastic drinking containers may be implemented on high-risk occasions when Brighton is busy, such as Brighton Pride, The Great Escape Festival or New Years' Eve. In addition, the applicant would take on board any up to date or real-time advice given by the Sussex Police about any local events or higher risk activity in the area, which may require the implementation of plastic containers on the terrace.

34. The applicant therefore invites the Licensing Panel to consider a bigger picture strategy for Brighton's beachfront that is more consistent with the Council's environmentally friendly reputation. Accepting the wide-ranging use of plastic will prevent the improvement of the beachfront offer and discourage higher quality operators from opening in the area. Allowing well managed premises with a premium offer to use glass safely could help raise overall standards and promote a more responsible drinking and dining culture on the beachfront.

REPRESENTATIONS

Support

35. The application attracted 5 representations in support from local residents and local businesses. The supporters recognise Shelter Hall as a well-managed, food-led and valuable addition to Brighton's seafront (emphasis added):

36. REDACTED TEXT local business owner:

I believe that it will bring a different type of customer to the area rather than the usual crowd who want to drink excess amounts of beer on a hot sunny day. There are too many venues who are allowed to sell beer in plastic cups, offsite which is not sustainable. The bad behaviour from excess drinking puts customers and locals off from visiting this section of the beach during sunny days and the summer months. I believe use of glass within the boundary of the Hall will allow the businesses to police the behaviour of their customers in a much more responsible manner, in accordance to their license. Also during Covid I have seen the use of plastics increase and I believe we need to get back to the use of non plastic and non recyclable takeaway products as soon as possible.

The shelter hall will hopefully be more food led and a big draw to this area of the beach for customers who would like to enjoy eating alfresco on the beach with family and friends.

I have met the management team from the Shelter Hall. I believe they will act responsibly and be a force for good in the area. They have consistently kept us as one of their neighbours in the loop with plans and it is a breeze of fresh air on the seafront as to be honest.

37. REDACTED TEXT and REDACTED TEXT, local business owners:

"Shelter Hall is an innovative concept for Brighton and will enhance the thriving independent food scene. The operators have the long term and importantly a year round interest in the beach side operation. The management team is tasked to provide a quality food concept that

operates for locals as well as visitors year round rather than just for the busy months of the year.

...

Shelter Hall operated last summer with pop up spaces due to the pandemic. There was **no negative impact on the beach front**. The new permanent site will be a significant improvement and will provide **a year round quality independent food offering**. The Shelter Hall experience supports the licencing objectives. The quality operation, staffing and food focused set up promotes the prevention of crime and disorder, the prevention of public nuisance, promotes public safety and the protection of children from harm. **Furthermore, allowing glass to be used in external seating areas enhances the quality and food focused nature of the operation.**"

38. REDACTED TEXT, Brighton resident:

*"The Shelter Hall is a great addition to the sea front - a place to grab a coffee/late breakfast or lunch after life saving on a Saturday and an alternative place to meet friends for food and drink, either on a day off or weekend. **The different choices of food make it easy when out with fussy eaters or children.***

...

I do not see an issue with the use of glassware on the terrace, it will make no difference to anyone, apart from the people using it. It's so much nicer to drink from glasses.

The area is sectioned off and can not see why it will increase crime in the area. People will not be able to wander off with the glasses or with their drinks - it will be no different from someone drinking inside other premises nearby...

39. REDACTED TEXT, Brighton resident:

*"I've been to the Shelter Hall several times since it opened in 2020. **It's a great space with an original concept for our great city Brighton and Hove. Every time I have been I've found the staff and environment to be well managed and friendly. It's a great asset to our community and a space that all areas can enjoy.** We've been there as a family during the day for lunch or coffee and then in the evening with friends."*

40. REDACTED TEXT, Brighton resident:

*"...I think the developments and announcements about what the team behind Shelter Hall are doing is remarkable and i fully support the licence alteration requests, Shelter Hall is a great addition to the sea front - my daughter does lifesaving on a Saturday near it and this offer a great safe place to meet for coffee and food. **Most importantly is offers an alternative place to meet friends for food and drink, either on a day off or weekend and is***

a stark contrast to the uncontrollable mess that is the REDACTED TEXT nearby and many of the pubs that serve cheap beer in plastic cups without any care or consideration to the area.

The eclectic mix of food and drink offer (actually i notice they are mainly promoting their food on social media as its the key concept) is going to be a huge attraction for a diverse demographic of residents and visitors. I notice they are also doing a recovery strategy for new developing concept chefs - a full kitchen for them to access and be paid to deliver - that's amazing!. Very little on the seafront attracts me or any of my friends and family currently. To be honest much of what's on offer encourages us all to bring our own food and drink to the seafront. I would much rather see them use glassware on the terrace, not plastic!! It's so much nicer to drink from glassware especially if it's a higher value product.

The area is controlled by them and security (i noticed that on their licence) . I think allowing a venue to offer a quality experience is key to improving the seafront and much of what has happened historically on it. Please approve and support this application on behalf of the residents and parents of Brighton who want to see a better calibre of offer."

Objections

41. In addition, a number of representations objecting to the application were made from local licensed businesses. The applicant asks that the Licensing Panel bears in mind that these objectors could be categorised as trade competitors and the representations follow a similar content and theme. In doing so, the applicant submits that appropriate weight should be placed on the representations, particularly in light of paragraph 9.5 of the section 182 guidance (emphasis added):

"It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate."

42. The applicant engaged with the Police and Licensing Authority in advance of submission of the application and is grateful to those Responsible Authorities for their time during this process. The applicant has sought to explain and address the concerns raised by the Police at paragraphs 6 – 34 of these submissions.

43. All the objections raise concerns under Policy, which is addressed by the applicant below.

POLICY

44. From the outset, the Statement of Licensing Policy 2021 (“the Policy”) acknowledges local problems and trends such as pre- and post-alcohol loading, binge drinking and street drinking created by cheap alcohol and fierce, localised price competition, particularly between off-licence stores and supermarkets. Shelter Hall does not fall into this category of premises, which have been correctly identified as adversely impacting upon the licensing objectives. Instead, Shelter Hall is the type of well-managed premises that will help bring up standards and represent a positive move away from the categories of premises identified by the Policy as problematic. The applicant hopes that the Licensing Panel can consider the proposals under Policy in this context, particularly under the cumulative impact zone (CIZ) Policy.

45. In doing so, and by granting the application, the Licensing Panel can achieve the wider Policy objectives by striking an appropriate balance between economic prosperity and community protection¹. The Policy also recognises that culture and tourism is crucial to the ongoing economic success of the city: it brings in both money and national living wage jobs². The applicant’s proposals are very much aligned with the Council’s key Policy objectives, particularly in respect of enhancing the cultural and tourism offer on Brighton’s beachfront during the Covid-19 recovery period.

46. The Covid-19 pandemic is cited just once in the Policy, which was published in February 2021. Its citation was made in the context of cumulative impact assessment observational data recorded during the onset of the pandemic. The Covid-19 pandemic has had a catastrophic impact on the hospitality industry, including the applicant. A side effect of restrictions placed upon hospitality businesses and high levels of closure is an overall and general reduction in negative cumulative impact experienced in cumulative impact zones. There is some acknowledgement of this in the Policy and the applicant invites the Licensing Panel to bear in mind that prevailing levels of cumulative impact are materially lower than in 2019, when a number of the cumulative impact assessment studies were undertaken.

¹ Policy paragraph 1.5.6.

² Policy paragraph 1.7.1

47. Paragraph 3.1.6 of the Policy states:

“The Special Policy will only be overridden in exceptional circumstances. The effect of this special Policy is that applications for new Premises Licences or club premises certificates within the area, or variations which are likely to add to the existing cumulative impact, 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.”

48. The applicant submits that the proposals will result in no addition to existing cumulative impact and can be considered exceptional for the following reasons, *inter alia*:

- a. Shelter Hall is not the type of premises typically associated with negative cumulative impact. It is not an off-licence, large nightclub or high-capacity public house, all of which are identified in the Policy as typically contributing to cumulative impact³. Shelter Hall is a conditioned food-led concept that has already been accepted as a premises unlikely to add to cumulative impact by the Licensing Panel when granting the original Premises Licence.
- b. Shelter Hall and the specific proposals cannot realistically be attributed to the type of problems correctly identified in the Policy as contributing to negative cumulative impact, for example there is no suggestion that Shelter Hall will contribute to problems with street drinking, proxy purchasing, dispersal issues, pre-loading, excessive drinking, disorder, and the provision of cheap price alcohol⁴.
- c. The application does not propose a new Premises Licence, new licensable activities, an increase in capacity or an extension to authorised hours – all of which are more likely to add to existing cumulative impact and ought to be caught by the Policy presumption.
- d. The specific proposals, namely amendments to existing licence conditions and the proposal to allow glassware on the terrace, are unlikely to add to negative cumulative impact. For the reasons set out above, and supported by local residents and businesses,

³ Policy paragraph 3.1.9

⁴ Policy executive summary and Policy paragraph 3.1.7

the proposals will help the applicant to enhance its offering and help contribute to a positive change in the heart of the CIZ.

- e. The sale of alcohol is not the primary activity at Shelter Hall⁵. Extant Premises Licence conditions require Shelter Hall to be used as a food hall only. The primary use and purpose of visit is for customers to access to an iconic beachfront building and enjoy a wide range of food and entertainment. The alcohol is an ancillary offering that compliments the primary food offer, not the other way round - which is a defining characteristic of a premises contributing to negative cumulative impact.
- f. Shelter Hall is a business founded upon corporate social responsibility giving fledging local food entrepreneurs a platform to showcase their product and develop their own individual businesses. Staff are paid the national living wage. The Policy recognises that applicants demonstrating these types of characteristics could constitute exceptional circumstances⁶.
- g. Shelter Hall provides outdoor regulated entertainment and non-alcohol led activities within the city centre, which is encouraged by the Council⁷.

COVID-19

49. The catastrophic impact of the pandemic on City Centres and the hospitality industry is well known. The applicant opened Shelter Hall during the pandemic after very substantial investment 2019 - 2020. The success of the application will help the applicant continue to establish Shelter Hall as a prized asset on Brighton & Hove's beachfront during the Covid-19 recovery period and beyond.

50. Licensing decisions inevitably and should take into account the wider economic impact of a proposal made by a local business. This was recognised by the Court of Appeal in the leading case of *Hope and Glory* [2011] EWCA Civ 31, when Toulson LJ observed [at 42]:

⁵ Policy paragraph 3.1.9

⁶ Matrix note 5, page 19 Policy

⁷ Matrix note 6, page 19 Policy

51. *“Licensing decisions often involve weighing a variety of competing considerations: benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on.”*

SUMMARY

52. The Licensing Panel is invited to take into account:

- a. Shelter Hall is not the type of premises identified by the Policy as typically associated with negative cumulative impact. It is, and will remain, a non-alcohol-led food hall. This was confirmed by the Licensing Panel when granting the initial licence.
- b. The application does not propose a new licence, new licensable activities, an increase in capacity or extension to hours.
- c. The application proposes amendments to conditions only, in order for the applicant to safeguard the businesses’ viability during the Covid-19 recovery period and operate in an environmentally responsible manner.
- d. There are no individual resident objections. No local residents have come forward expressing concern that they would be adversely affected by the proposals. The only interested party objections are from licensed operators in the area.
- e. Local residents and local businesses have made representations in support.

53. For these reasons, the Licensing Panel is invited to grant the application. In doing so, the Council can signal their support for a new business that is committed to helping to raise standards on Brighton and Hove’s beach front in a safe, responsible and professional manner which promotes the licensing objectives and has an overall positive impact in the Brighton CIZ.

APPENDIX 1 – INDICATIVE EXAMPLE OF FOOD TRADERS

Caught by Crabshack

Local fish and seafood with big simple flavours

Crabshack is a family owned and operated fish and seafood restaurant on the beach in Worthing, which is entering its sixth year. The family connection is close as Andy and Phil are brothers! Both couples are committed to providing fantastic, freshly prepared honest, tasty food of the highest quality in fun and friendly surroundings.

Pizza by VIP

Authentic, tasty neopolitan pizza

Our history takes us back to Naples, where we established our first shop in 1845. We are a family-run business, spanning five generations, with great commitment and passion to our trade. Real neopolitan made with home made sourdough and cooked in 100% traditional wood burning pizza oven. All our ingredients come from our farm in Naples.

Pan by Lost Boys Chicken

Noodles, chicken bun and wings all smothered in Lost Boys signature sauce

Founder Tom Samandi left the 'day job' to invest his time and energy into his number one passion – making incredible food. He created Lost Boys, a brand named in recognition of time spent in his youth, eating and having fun.

Tart by Sugardough

Coffee, sweet and savoury pastries and cakes

Kane McDowell started his career as a pastry chef apprentice 25 years ago in Melbourne. In 2009, he opened Sugardough in an empty shop with a £100 ebay oven and a rolling pin. He uses only traditional baking techniques and top-quality ingredients to deliver the very best handmade cakes, pastries, savouries and bread.

Zest by Hanoi Kitchen

Celebrating seasonal and local produce, offering fresh and vibrant salads and juices with a slight Asian influence.

Nigel Matthews set up Hanoi Kitchen 8 years ago after living in Vietnam and falling in love with their unique food. Having scoured the streets of Hanoi and tasted every dish along the way, he persuaded his favourite traders to teach him the best Vietnamese street eats.

Hanoi kitchen has been selling high quality Vietnamese salads and snacks across London ever since. They have a wealth of experience delivering high quality healthy food offering working at some of the

UK's best festivals, events and London markets. Now moving to Brighton with his family to set up a new project ZEST focusing on fresh healthy seasonal salads and juices with a slight Asian touch.

Ox Block by Kenny Tutt

Ox Block by MasterChef Champion Kenny Tutt is an exciting new smokin' robata grill kitchen showcasing great seasonal meats

Chef Patron Kenny Tutt co-founded PITCH Restaurant & Cookery School with his wife Lucy in his home town of Worthing in 2019, just a year after winning the prestigious MasterChef title. Inspired on a daily basis by his Sussex surroundings, and the fantastic produce available on the doorstep, Kenny creates menus that make it difficult to choose!

