

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

**10.00am 15 MAY 2020**

**VIRTUAL MEETING - SKYPE**

**MINUTES**

**Present:** Councillor ; O'Quinn, Simson and Osborne

**Officers:** Rebecca Siddell (Lawyer), Annie Sparks (Regulatory Services Manager), Jim Whitelegg (Regulatory Services Manager), Becky Pratley (Technical Officer), Gregory Weaver (Demoratic Services Officer)

**PART ONE**

**4 TO APPOINT A CHAIR FOR THE MEETING**

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

**5 PROCEDURAL BUSINESS**

**2a Declaration of Substitutes**

2.1 There were none.

**2b Declarations of Interest**

2.2 There were none.

**2c Exclusion of the Press and Public**

2.3 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).

2.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of Item 3 onwards.

**6 HOVE SF CONNECT LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)**

- 3.1 The Panel considered a report of the Executive Director of Neighbourhoods, Communities & Housing in relation to an application for a variation of a Premises Licence under the Licensing Act for Hove SF Connect, 373 Kingsway, Hove, BN3 4QD. Present at the hearing were: Annie Sparks, Jim Whitelegg, Becky Pratley (Licensing Officer), Andrew Sanders (Senior Licensing Assistant for Applicant), Ranjit Kataria (Area Manager), Robert Botkai (Solicitor), Sundram Sugantham (Instructing Officer), Craig Rogers (Resident Representative), Rebecca Siddell (Legal Advisor).

### **Introduction from the Licensing Officer**

- 3.2 The Licensing Officer stated the following:
- This was a variation application for the premises licence issued for Hove SF Connect, 373, Kingsway, Hove.
  - The variation proposed to:
    - Extend the hours for sale of alcohol to 24 hours a day (the current licence permits 8am – 11pm)
    - Remove the embedded restrictions attached to the licence.
    - Remove the conditions listed under annex 2.
    - Included in annex 2 the conditions in boxes B to E of Section 16 of the application which could be found on pages 17 and 18 of the agenda in Appendix A.
  - The opening hours of the current licence was 24 hours a day.
  - The premises did not fall within the Cumulative Impact area or the Special Stress Area.
  - Three representations were received during the consultation period, from the Licensing Authority, the Environmental Protection Team and a local resident, relating to the licensing objectives of the Prevention of Crime & Disorder and the Prevention of Public Nuisance.
  - Following discussions and after agreeing conditions, the Environmental Protection Team withdrew their representation on Wednesday 13<sup>th</sup> May.
  - The withdrawal, the 7 agreed conditions and 2 further conditions offered by the applicant were circulated via Addendum 2 on Wednesday. The second page of Addendum 2 detailed the two further conditions offered by the applicant at 8 & 9.
  - Addendum one, circulated on Tuesday showed a chain of emails between the applicant's representative and the Police Licensing Unit from December 2019 to January 2020, showing pre-consultation took place.
  - As the panel were aware, the adoption of the Matrix approach to licensing decisions found in the statement of licensing policy and this agenda, included a table with provisions for a terminal hour for all classes of license premises in a particular area, recognising the diverse operations and different risks presented by those premises.
  - This premises did not fall within our cumulative impact area or the special stress area. It fell in the 'Other Areas' category of the matrix and as such the matrix would allow a licence for off sales until 11pm (or earlier if considered a densely residential area) but it was important for the committee to also take in to account the notes that accompany the Matrix, particularly that each application would be given individual consideration on its own merits.

**Questions to the Licensing Officer**

3.4 In response to Councillor O'Quinn, the Licensing Officer stated that the 24 hour licence had been grandfathered over in 2005. It was noted that the premises was currently able to sell food for 24 hours.

**Representation from Licensing Authority**

3.5 Jim Whitelegg addressed the panel and stated the following:

- The Licensing Team had made this representation as guardians of the statement of licensing policy (SoLP). It was right to say that there was no history of licensing complaints relating to this premises and it was understood from the Police that there was no significant local area crime data.
- There was an obvious disconnect in where alcohol was sold for off consumption and any subsequent nuisance or crime and disorder. Causality of alcohol sale, consumption, nuisance and impact was difficult to link back to the place where alcohol was purchased and consumed.
- The City experienced local problems and local trends such as pre & post-loading, binge drinking and street drinking created by cheap alcohol and fierce, localised price competition, particularly between off-licence stores and supermarkets.
- This was an application for a 24 hour off licence which would go against policy in terms of BHCC's matrix approach, where it fell in the 'Other Areas' category of the matrix and as such the matrix allowed a licence for off sales until 11pm (or earlier of considered a densely residential area) but it was important for the committee to also take in to account the notes that accompanied the Matrix, particularly that each application would be given individual consideration on its own merits.
- There was discretion to depart from the policy where justified. However, departure from the Matrix Model was only expected in exceptional circumstances.
- It would be for the applicant to set out what these were for the panels consideration in determining the application.

**Questions to Licensing Authority**

3.7 In response to Councillor O'Quinn, Becky Pratley stated that there were no 24 hour shops in the immediate vicinity.

3.8 In response to Councillor O'Quinn, Jim Whitelegg confirmed that nuisance and disturbance had occurred as a result of alcohol sales.

3.9 In response to Councillor Simson, Jim Whitelegg confirmed that the applicant had offered additional conditions which could be seen as exceptional circumstances.

3.10 Mr Rogers sought clarification of the criteria required when considering allowing the sale of alcohol where other shops in the vicinity were able to do the same.

- 3.11 Jim Whitelegg noted that “need” was not a consideration taken in to account and that under Licensing regulations under the current Government was clear on this. It was stated that decisions had to be made on Licensing Objectives such as protecting people from harm. It was further noted that any conditions proposed had to be appropriate and based on what was happening. It was noted that if there were any issues and a review could be brought.
- 3.12 Mr Rogers enquired what monitoring would be put in place other than ad hoc visits.
- 3.13 Jim Whitelegg stated that the licensing team had risk rate inspection programs ongoing which was a proactive measure. It was noted that if any complaints were received then inspections would be carried out.

### **Representation from Mr Rogers**

- 3.14 Mr Rogers addressed the panel and stated the following:
- Concerns were expressed regarding the potential of anti-social behaviour, public disorder and increased littering.
  - It was stated that there was already an issue with regard to noise levels in the area and that due to it’s proximity to the seafront, there would be increased likelihood of wind swept refuse to litter the street.
  - It was further stated that other premises with late licenses were already in operation in the area.
  - Concerns were expressed regarding the lack of communication between the shop staff and Mr Rogers.

### **Questions to Mr Rogers**

- 3.15 In response to Councillor O’Quinn, Mr Rogers confirmed that issues regarding graffiti had yet to be addressed.
- 3.16 In response to Councillor Simson, Mr Rogers stated that issues arose during weekend evenings and that Deliveroo was currently operating during the Covid lockdown period.
- 3.17 In response to Councillor Osborne, Mr Rogers stated that there were normally barriers placed at St Leonards however people tended to park across the road from residence. It was further stated that an environmental officer had spoken to the garage who had refused to address graffiti on the wall. It was confirmed that a neon light was on all evening which did affect the resident’s premises as curtains had to be pulled in the evening.

### **Questions for Regulatory Services Manager**

- 3.18 In response to Councillor O’Quinn, Annie Sparks stated that the appellant had proposed further conditions to address issues originally brought forward by the previous Environmental Health Officer. It was further stated that provision of the manager’s details would help to maintain a routine dialogue and that there were no complaints raised with the previous Environmental Health Officer with regard to graffiti.

- 3..19 In response to Councillor Simson, Annie Sparks referred to previous engagement with garages of a similar character who had supplied noise management plans to set delivery times with a view to minimising noise.
- 3.20 In response to Mr Rogers, Annie Sparks noted that noise across the city was quite common and that it would not be possible to change delivery times on Sunday. It was further stated that the erection of a 6ft wall around the site did not constitute a proportionate response.
- 3.21 In response to the applicant, Annie Sparks confirmed that matting was present at delivery sites and that extra matts were requested.

### **Representation from Applicant**

- 3.22 Mr Botkai addressed the panel and stated the following:
- It was confirmed that this was an application for a variation of premises not new licence or review.
  - It was stated that the applicant had already had a licence to sell alcohol from 8-11pm at night.
  - Reference was made to the 220 Mark's and Spencer's shops operating 24 hours a day run by BP and it was stated that many other Licensing Panel hearings had been attended country wide.
  - It was stated that, to date, so far only 1 objection had been raised by police.
  - It was noted that there had never been a representation submitted by a member of the public at any other licensing hearings.
  - Reference was made to a request from the former Environmental Health officer, to place matts at the back of the store to help mitigate noise during deliveries. It was confirmed that it was agreed that matts would be placed all the way to the back of the store thus extending the area of coverage for noise reduction.
  - It was stated that conditions had been agreed and that changes were agreed to as well as well as various aspects having been considered such as the issue of fans. It was noted that this had been ameliorated by works carried out to install new compressors.
  - It was stated that that the request for a 6ft wall was not a proportionate response and so could not be agreed to.
  - It was clarified that conditions requested must be enforceable and possible not aspirational.
  - It was noted that an application from BP constituted an exceptional circumstance as the applicant were an experienced operator that provided good management and service at over 200 stores nationwide.
  - It was noted that cashiers were able to stop people from shopping at the store if they did not feel comfortable with a potential vexatious guest and that staff had access to remote control of the entrance to enforce this.
  - It was stated that Police had confirmed that BP were experts in the field of safety with regard to petrol stations.
  - It was reaffirmed that the sale of alcohol was not the main purpose of the shop and it was a fresh food store.

- It was noted that there was no evidence of the venue being used as an area for pre-loading and that efforts had been undertaken to confirm this with the store manager and area managers.
- It was stated that the previous Environmental Health Officer had confirmed that provision of contact details with the area manager helped to improve communication.
- It was noted that in an isolated case where a truck had reversed out of the site, the area manager had written to Mr Rogers to confirm this would never happen again.
- It was confirmed that management was willing to render and repaint the wall thus clearing it of the graffiti.
- It was stated that the number of Deliveroo pickups would diminish once the Covid lockdown was ended.
- It was recognised that communication between residents and the area manager should be improved in future.
- It was stated that the area manager was happy to meet with Mr Rogers.

### Questions for the Applicant

- 3.21 In response to Councillor O'Quinn, Mr Botkai referred to the local resident's association and proposed a quarterly meeting. It was stated that there were no caged deliveries before 7am.
- 3.22 In response to Councillor Simson, Mr Botkai confirmed that through national promotions, drinks deals were sold. It was stated that the licence being applied had been brought from the previous regime. It was confirmed that a more modern suite of conditions were proposed in an effort to update conditions that were set some time ago. It was confirmed that drivers were trained on challenge 25.
- 3.23 The BP area manager stated that the store doors were locked from 10pm onwards.
- 3.24 In response to Councillor Osborne, Mr Botkai stated that there was a 4 man management team in store and that they operated the shop between 5:30am – 10:30pm daily. It was confirmed that BP were part of the BCRP radio program.
- 3.25 In response to Mr Rogers, Mr Botkai stated that the condition 9 had evolved over years within the trade. It was stated that efforts were made to not sell drinks that would be harmful to drinkers such as tenant super and super strength. However some good beers which were stronger were sold but were expensive. It was noted that police were supportive of this measure.

### FINAL SUMMARIES

- 3.26 The Licensing Officer addressed the panel and gave the following final summary:

“This is an application for a variation to the premises licence issued for Hove SF Connect, 373 Kingsway, Hove.

The variation proposes to;

- Extend the hours for sale of alcohol to 24 days a day (the current licence permits 8am-11pm).

- To remove the embedded restrictions attached to the licence.
- To remove the conditions listed under Annex 2.
- To include in Annex 2 the conditions in boxes b to e of Section 16 of the application. Which can be found on pages 17 and 18 of today's agenda, in Appendix A.

The opening hours of the current licence are 24 hours a day.

Conditions proposed to Annex 2 found at pages 17 and 18 of today's agenda, were agreed with Sussex Police who are the experts and lead on the Prevention of Crime and Disorder Licensing Objective.

Addendum 2 shows the conditions agreed with the Environmental Protection Team who are the experts on the Licensing Objective of the Prevention of Public Nuisance.

You have heard from all the parties present.

Licensing Guidance states that: In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- The steps that are appropriate to promote the licensing objectives;
- The representations (including supporting information) presented by all the parties;
- The Guidance;
- Its own statement of licensing policy

Licensing guidance states "Need" is not a matter for the licensing authority to consider in discharging licensing functions.

It is important to note that each application will be given individual consideration on its own merits.

There is discretion to depart from the policy if exceptional circumstances have been demonstrated.

If the Panel decide to grant the application then any conditions added to the licence to meet the Licensing Objectives should be clear, precise and enforceable.

Alternatively, the licensing authority may refuse the application on the grounds that granting the application will undermine Licensing Objectives and conditions would be ineffective."

3.27 The Licensing Authority Officer addressed the panel and stated the following:

"The Licensing Team act as guardians of the council's Statement of Licensing Policy and we make this representation the application made is contrary to our policy and will impact on Licensing Objectives. We therefore invite a Sub-Committee Panel to decide there are exceptional circumstances to depart from the policy."

3.28 Mr Rogers addressed the panel and stated it appeared that nothing exceptional was being offered.

3.29 The Applicant addressed the panel and stated the following:

- It was noted that this was a variation and not a new application
- It was further noted that the situation with regard to targeted beers for consumption was in relation to the strength of alcohol.
- It was noted that areas of best practice were fully complied with.
- It was stated that Deliveroo was an issue that was being considered among others in the changing environment.
- It was acknowledged that better communication with resident rep was required and an offer was made to Mr Rogers to meet with the Store Manager in future.
- It was agreed that the License Holder would attend resident meetings although a commitment to quarterly meetings was not a guarantee as the frequency of meetings had to be gauged.

3.30 **RESOLVED** – that the panel’s decision was as follows:

“The panel has read all the papers, including the further addendum information submitted by the applicant, and listened carefully to all the submissions made by the parties at the hearing.

This is an application for a variation of the premises licence. The application is to extend the hours for sale of alcohol off the premises to 24 hours daily. The application also seeks to update the licence generally and include new and revised conditions. The premises is currently open 24 hours a day and includes late night refreshment from 23:00 to 05:00 hours.

There are two relevant representations from the Licensing Authority and a local resident. The representation from the Environmental Protection team was withdrawn upon agreement of conditions to be added to the licence, and correspondence relating to this is included in addendum 2. However to assist the panel, the Environmental Protection (EP) manager was present at the hearing to answer questions.

The representation from the licensing authority draws attention to the relevant policy areas and in particular the Matrix Model approach which indicates that in the ‘Other Areas’ of the city, off licences might be granted with a terminal hour of 23:00 and so this application is contrary to that policy unless exceptional circumstances can be shown. There is concern about the potential for public nuisance in granting this application. The potential for public nuisance and anti-social behaviour is the main concern of the local resident who stresses the residential nature of the area around the premises. He is concerned that 24 hour alcohol provision will bring more people into the area causing public nuisance. He believes the business has shown a disregard for local residents.



The applicant explained the business context of the application and the pre-consultation he had carried out with the police leading to the agreement of conditions. He further explained how the business operated with high staffing levels and emphasised that this was an M&S food store where alcohol was not the primary purpose. He had engaged with EP and finally agreed workable conditions with some concessions on the part of BP. He had also agreed to further conditions such as sensible on strength and no single cans. He said that Ranjit Kataria, the area manager, was keen to meet with the resident to go through concerns and that the business would be willing to participate in regular resident's association meetings.

The panel has carefully considered all the points made and the application of our policy to this application. We have had a thorough discussion of all the issues and concerns during the hearing. The panel consider that the applicant has demonstrated an exceptional willingness to meet the requirements of the responsible authorities notably the police and EP and to a great extent the licensing authority. They have met with relevant officers on the site to go through areas of concern for example deliveries, litter and noise, and conditions are now agreed to deal with these and other concerns. The conditions proposed and agreed fully meet the areas of best practice stated in our policy and go beyond that in their scope. It is noted that the applicant is already a member of the BCRP. This is currently a 24 hour operation where food and fresh produce is the principle product sold as highlighted in our policy at 3.5.2. In all these circumstances and in particular given the breadth and scope of the conditions, the panel feel that there are exceptional grounds to depart from the Matrix approach and grant the application.

As discussed during the hearing, the panel amend conditions 9 and 10 relating to the operation of the entrance door (on the operating schedule at page 17 of the papers) to read 6am rather than 5am. We further amend condition 7 of those agreed with EP so that it reads: *A direct contact number for the licence holder's area manager, and a direct contact number for the store will be made available to nearby residents on request.* As offered by the applicant the panel add the following condition: *The licence holder's representative will attend resident group meetings upon request to discuss any issues in connection with the operation of the store.* The panel therefore grant the application to include all the conditions on the operating schedule and those agreed with EP and the licensing authority with the above mentioned addition and amendments. The panel consider that the conditions and measures agreed will promote the licensing objectives and deal with the concerns raised.

Finally the panel hope that better communication between local residents and the business will take place as a result of this panel hearing. All parties will be mindful that ultimately review powers exist which represent a key protection for the community

should problems associated with the licensing objectives occur after the grant of an application.”

The meeting concluded at 1.35pm

Signed

Chair

Dated this

day of