

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

10.00am 20 OCTOBER 2021

VIRTUAL

MINUTES

Present: Councillors Deane (Chair) Moonan and Simson

Officers: Sarah Cornell, Senior Licensing Officer, Jo Osborne, Licensing Officer, Liz Woodley, Senior Solicitor, Penny Jennings, Democratic Services Officer

PART ONE

1 TO APPOINT A CHAIR FOR THE MEETING

Councillor Deane was appointed Chair for the meeting.

2 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 any item on the agenda.

3 THE BRIGHTON ZIP LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

- 3.1 The Panel considered a report of the Executive Director, Housing, Neighbourhoods and Communities requesting that they determine a notification of a Temporary Event Notice in view of formal objection(s) to it by a relevant person under section 104(2) of the Licensing Act 2003.

Presentation by the Licensing Officer

- 3.2 The Licensing Officer, Jo Osborne explained that a TEN was sought to cover the sale of alcohol during the following periods

These Temporary Event Notices relate to the time periods below:

23rd October 2021 Opening Hours: 12:00 to 23:30, Sale of Alcohol: 12:00 to 23:00

24th October 2021 Opening Hours: 12:00 to 22:30, Sale of Alcohol: 12:00 to 22:00

30th October 2021 Opening Hours: 12:00 to 23:30, Sale of Alcohol: 12:00 to 23:00

31st October 2021 Opening Hours: 12:00 to 22:30, Sale of Alcohol: 12:00 to 22:00

6th November 2021 Opening Hours: 12:00 to 23:30, Sale of Alcohol: 12:00 to 23:00

7th November 2021 Opening Hours: 12:00 to 22:30, Sale of Alcohol: 12:00 to 22:00

- 3.3 The Panel were required to consider the submission received from the Police and needed to decide whether it was necessary for the promotion of the licensing objectives of the Prevention of Crime and Disorder and Public Safety, to issue a counter notice to prevent the events from taking place.

Submission by Sussex Police

- 3.4 Mark Thorogood was in attendance on behalf of the Police and explained that the police had concerns about the way the premises had been managed under the previous premises licence which had recently lapsed on the liquidation of Happyvale Limited. The applicant in this case, Madeira Leisure Limited, appeared to have links to that company, so it is reasonable for the Police and Panel to have regard to the behaviour of the previous licence holder. The Police witnessed concerned that the premises was moving away from a restaurant style of operation to a café style. This was also a challenging location within the Cumulative Impact Zone (CIZ) with a relatively high number of incidents drawing upon police and other resources. breaches of the restaurant condition on the licence and did not have confidence that the premises will promote the licensing objectives. They were particularly concerned that the premises was moving away from a restaurant style of operation to a café style. This was also a challenging location within the Cumulative Impact Zone (CIZ) with a relatively high number of incidents drawing upon police and other resources.

Submission by the Applicants

- 3.5 On behalf of the applicant and premises user it was stated that they were going through a period of change for the site as a whole. A new premises licence had been applied for. The applicant accepted that there had been breaches of the restaurant condition under the old licence which was due in part to some misunderstanding of the relevant law. They now appreciated the situation and wished to re-build confidence and trust in their operation of the premises and these applications represented a controlled way in which to do this. The Temporary Event Notices made it clear that the conditions in Annex A

would be adhered to during the temporary events. These included waiter/waitress service and availability at all times of substantial food.

Closing Submissions

- 3.6 No further issues were raised and the Licensing Officer made their closing submission reminding Members of the germane issues they needed to consider when determining the application. Each of the other parties then made their closing submissions reiterating the points they had made earlier in the meeting.

The Decision

- 3.7 The Chair stated that the panel had read all the papers and listened carefully to the representations made by both Sussex Police and the applicant. The Panel had decided not to issue a counter notice to the premises user in respect of the above events. This means that the events could go ahead.
- 3.8 The police had concerns about the way the premises were managed under the previous premises licence which recently lapsed on the liquidation of Happyvale Limited. The applicant in this case, Madeira Leisure Limited, appeared to have links to that company, so it was reasonable for the Police and Panel to have regard to the behaviour of the previous licence holder. The Police had witnessed breaches of the restaurant condition on the licence and did not have confidence that the premises will promote the licensing objectives. They were particularly concerned that the premises was moving away from a restaurant style of operation to a café style. This was also a challenging location within the Cumulative Impact Zone (CIZ) with a relatively high number of incidents drawing upon police and other resources.
- 3.9 On behalf of the applicant and premises user it was stated that they were going through a period of change for the site as a whole. A new premises licence had been applied for. The applicant accepted that there had been breaches of the restaurant condition under the old licence which was due in part to some misunderstanding of the relevant law. They now appreciated the situation and wished to re-build confidence and trust in their operation of the premises and these applications represented a controlled way in which to do this. The Temporary Event Notices made it clear that the conditions in Annex A would be adhered to during the temporary events. These included waiter/waitress service and availability at all times of substantial food.
- 3.10 The panel needed to decide these applications on their merits and take appropriate action to promote the licensing objectives. The panel did share the police' concerns about the way in which the premises was managed under the previous licence and acknowledged that this was a challenging area and within the CIZ. However, the panel noted that the Police had not identified any concerns during a licensing check undertaken on the weekend of 2nd/3rd October. The panel also recognised that the applicants did accept responsibility for the way in which the premises had been run and were keen to rebuild trust with the authorities. In particular, they are anxious to work with the Police to fine tune conditions and policies in connection with their current licence application. The panel considered that it is appropriate to allow these events to go ahead to give the premises an opportunity to demonstrate they can operate responsibly and promote the licensing objectives.

3.11 **RESOLVED** – That Temporary Event Notices be issued as set out above for the events stipulated for the Brighton Zip Wire, Duke’s Mound, Brighton.

4 NEW PREMISES LICENCE APPLICATION, ARTISAN DELI MARKET, 13 DUKE STREET, BRIGHTON

4.1 The Panel considered a report of the Executive Director of Housing, Neighbourhoods and Communities which required them to determine an application for a New Premises Licence in respect of Artisan Deli Market Limited, 13 Duke Street, Brighton.

Presentation by the Licensing Officer

4.2 The Senior Licensing Officer, Sarah Cornell confirmed that there was an existing premises licence held by the same applicants and that the premises fell within the Cumulative Impact Area. Details of the two representations received from the Police and the Licensing Authority were set out in the report. The representations received related to the Prevention of Crime and Disorder, Cumulative Impact, Prevention of Public Nuisance and Protection of Children from harm

Submission on Behalf of the Police

4.3 The Representative present on behalf of the Police explained that the police were concerned that this application would add to negative cumulative impact in a challenging city centre location and that there had already been breaches of conditions identified on police visits to the premises.

Submission on Behalf of the Licensing Authority

4.4 Jo Osborne was in attendance on behalf of the Licensing Authority and explained that the licensing authority wished the panel to scrutinise this application as it fell within the CIZ and some elements such as the proposed off sales were contrary to policy.

Submission on behalf of the Applicants

4.5 The applicant explained the nature of the business and style of operation and the panel was able to question the applicant fully and canvass further conditions and restrictions. The panel considered that they needed to be mindful of the premises location in the CIZ and of the need therefore to ensure that the application will not add to problems in the area and the potential need in the light of that for a more limited licence to be granted.

Closing Submissions

4.6 Once the point had been reached when no further issues were raised and following the closing submission by the Licensing Officer each of the other parties gave their closing submissions re-iterating the points that they had raised during the course of the meeting. The Panel then deliberated on the matter and made their determination.

The Decision

- 4.7 The Chair, explained that the Panel has read all the papers including the report and relevant representations and listened to all the submissions made that day.
- 4.8 This was an application for a new premises licence within the Cumulative Impact Zone (CIZ) and therefore subject to the special policy on cumulative impact as set out in the Statement of Licensing Policy. Our policy stated that applications for new premises licences would be refused following relevant representations unless the applicant had demonstrated that their application would have no negative cumulative impact. The special policy would only be overridden in exceptional circumstances. However, the policy was not absolute. Upon receipt of a relevant representation, the licensing authority would always consider the circumstances of each case and whether there are exceptional circumstances to justify departing from its special policy in the light of the individual circumstances of the case. If an application is unlikely to add to the cumulative impact of an area, it may be granted. The impact can be expected to be different for premises with different styles and characteristics.
- 4.9 There were special circumstances regarding this application in that a premises licence already existed for this premises held by substantially the same applicant. The applicant wished however to extend licensable activities (off and on sales to 22:00 hours) and sell alcohol for consumption on the premises on the first floor café area (in addition to the outside seating area) under café bar conditions. They wished to expand the alcohol offered for off sales to include a limited selection of craft gin and rum, and to increase the retail area for off sales. The application proposes the conditions on the current licence for example CCTV and Challenge 25 will attach to this new licence amended where appropriate. There is also an application for recorded music but this is now de-regulated if the premises is permitted to sell alcohol for consumption on the premises.
- 4.10 Two representations had been received from Sussex Police and the Licensing Authority. The police were concerned that this application will add to negative cumulative impact in a challenging city centre location and that there have already been breaches of conditions identified on police visits to the premises. The licensing authority wished the panel to scrutinise this application as it fell within the CIZ and some elements such as off sales were contrary to policy.
- 4.11 The applicant had explained the nature of the business and style of operation. The panel was able to question the applicant fully and canvass further conditions and restrictions. The panel had carefully considered this application and was very mindful of the location of the premises in the CIZ and of the need therefore to ensure that the application would not add to problems in the area. The panel were however satisfied that if a more limited and restricted application was granted it was unlikely to add to negative cumulative impact. There were also exceptional circumstances in that a licence already existed for off sales and service to outside seating areas. The panel expect the applicant to surrender the current licence upon grant of this application. The panel thus grant the application with the following further conditions:
1. Condition 2 on the current licence to be amended as follows: 'The display/storage of alcohol on the shop floor will be limited to an area no greater than 1 metre x 2 metres save that an additional shelf behind the serving counter shall be permitted of 50 centimetres in length for 5 bottles.

2. The sale of alcohol for consumption on the premises on the first floor shall terminate at 18:00 hours and café conditions (namely waiter/waitress service and substantial food available at all times) shall apply to that area.
3. Condition 5 on the current licence to be amended to include sale of craft gin and rum and to add that there shall be no restriction on type of alcohol to be sold in the hampers but that alcohol shall not constitute more than 50% of the hamper content.

The panel considers that this limited style of operation with all the conditions attached will not undermine the licensing objectives.

- 4.-- **RESOLVED** – That a licence be granted to Artisan Deli Market Limited, 13 Duke Street, Brighton in the terms set out above.

Note: The Legal Adviser to the Panel explained that the applicants would receive notification of the Panel's decision in writing and that details of their appeal rights would be included.

The meeting concluded at 12.00pm

Signed

Chair

Dated this

day of