BRIGHTON & HOVE CITY COUNCIL

LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

10.00am 2 DECEMBER 2021

VIRTUAL - VIA MICROSOFT TEAMS

MINUTES

Present: Councillors: O'Quinn (Chair), Knight and C Theobald

PART ONE

- 4 TO APPOINT A CHAIR FOR THE MEETING
- 4.1 Councillor O'Quinn was appointed Chair for the meeting.
- 5 PROCEDURAL BUSINESS
- 5a Declaration of Substitutes
- 5.1 There were none.
- 5b Declarations of Interest
- 5.2 There were none.
- 5c Exclusion of the Press and Public
- 5.3 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).
- 5.4 **RESOLVED** That the press and public be not excluded from the meeting during consideration of this application.
- 6 THE BRIGHTON ZIP LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)
- 6.1 The Panel considered a report requesting that they determine the application under the Licensing Act 2003 for a new premises licence for the Brighton Zip, Dalton's Bastion, Madeira Drive BN 2 IEN

Presentation by Licensing Officer

- 6.2 The Licensing Officer explained that this application was for a New Premises Licence under the Licensing Act 2003. The application proposed a new premises licence for a café at Brighton Zip. The site had, until recently, had the benefit of a premises licence but unfortunately this had lapsed irrevocably due to a group restructure and the liquidation of the licence holder. This had happened at the worst time possible: just when the site was being redeveloped (see document attached) and when businesses were fully reopening following Covid. This application was for a cafe licence rather than on the same terms as the previous licence which had a restaurant condition. The hours sought were also slightly later. The applicant would like a more flexible operational approach which did not require every customer to consume a table meal with alcohol, albeit it was still envisaged that the majority of turnover would still come from food sales. Any premises licence granted would be linked to the operation of the Brighton Zip and. with the bespoke conditions proffered, the applicant did not consider that a grant of a new premises licence on the terms sought would add to cumulative impact. Instead, it was hoped that a successful Brighton Zip would regenerate Madeira Drive and help steer the local licensed economy away from alcohol focused vertical drinking establishments. Brighton police had been consulted but had not agreed the terms and conditions put forward by the applicants. The applicant had indicated that they would be happy to discuss the proposed application further with the police and any statutory authority or interested party. To enable some trade whilst the application was being determined and to hopefully show that the applicant could adhere to the terms of the sought premises licence and uphold the licensing objectives Temporary Event Notices would be sought.
- 6.3 2 representations were received against the application. They were received from Sussex Police and The Licensing Authority on the grounds of Prevention of Crime and Disorder, Public Safety, Prevention of Public Nuisance, Protection of Children from Harm.6 representations were received in support of the application. They were received from local residents and local businesses on the grounds of Prevention of Crime and Disorder and Prevention of Public Nuisance.

Representations

- 6.4 The Panel considered the representations which had been received and the Licensing Authority were able to amplify on their objections which had been included in the submitted paperwork.
- 6.5 Those who were present representing the applicants had the opportunity to speak in support of their application and responded to questions put other parties and the Panel themselves.

Summaries

6.6 At the conclusion of the above process the Licensing Officer gave a closing summary, and the other parties also had the opportunity to make a closing submission in support of their representations.

Considerations and the Decision

- 6.7 The Chair stated that the panel had read all the papers including the report and representations in support of and against the application. It had also listened to the arguments and submissions made at the hearing that day. This was an application for a new premises licence for a cafe at Brighton Zip, Daltons Bastion which was located within the cumulative impact zone. As such it was subject to the special policy on cumulative impact as set out in the Statement of Licensing Policy. The premises previously had the benefit of a premises licence with restaurant conditions, but that licence lapsed when the premises licence holder went into liquidation.
- 6.8 The application had originally included the supply of alcohol between the 1st of April and 30th of September each year between midday and 11:00 pm every day and between the 1st of October and 31st of March between noon and 10 pm Sunday to Wednesday and noon till 11pm Thursday to Saturday. The proposed opening hours for the premises were identical to those for the supply of alcohol for consumption on the premises. During the hearing the applicant's legal representative revised the application so that the opening hours and hours for supply of alcohol would end 10:00pm every day. We therefore confined our consideration to the amended application. The Council's policy stated that applications for new premises licences would be refused following relevant representations unless the applicant could demonstrate 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 were exceptional circumstances to justify departing from its special policy in the light of the individual circumstances of the case. If the application was unlikely to add to the cumulative impact of an area, it could be granted. The policy stressed that the impact could be expected to be different for premises with different styles and characteristics, especially where alcohol is not the primary focus.
- 6.9 The council as licensing authority had included in its statement of licensing policy a matrix approach to licensing decisions. This provided a framework of what the licensing authority would like to see in its area and gives an indication of the likelihood of an application being approved. It also provided terminal hours for all classes of licensed premises in particular areas. For cafes in the cumulative impact area the matrix provides for a 10pm closing hour.
- 6.10 At the hearing the Police reiterated their objection and gave examples of recent crimes committed within the vicinity of the Zip Wire, including a sexual offence and violence against the person. The Panel had been told that there had been no problems with the operation of the last three TENS at the end of October and beginning of November. Those TENS had operated under cafe conditions as opposed to restaurant conditions.
- 6.11 The Licensing Authority representative had reminded the panel that departure from the Statement of Licensing Policy should only be considered in exceptional circumstances. The panel needed to determine whether the application was exceptional.
- 6.12 The Panel had heard from the applicant company's representatives. The applicant was seeking a cafe licence as opposed to a licence with restaurant conditions. That would satisfy customer demand for a drink without the requirement for its sale to be ancillary to

a meal. There would be no queuing for alcoholic drinks as a condition had been proposed that service would be by waiter/waitress service. Substantial food would be available at all times. The application would be limited to on sales. It is not a dedicated pre-club venue. The alcohol offer would not be as extensive as a traditional bar, and a condition prohibiting the sale of cocktails and shots would be acceptable. With regards to the statement of licensing policy and matrix, it was suggested that the application was exceptional. The Zip Wire was a unique attraction on the sea front, and a condition making the sale of alcohol ancillary to the main function of the Zip Wire had been offered.

- 6.13 The Panel had considered this application on its own merits. It recognised the unique nature of the Zip Wire but had reservations that the premises appeared more closely aligned to a bar than a traditional café. The food and beverage offer were more typical of a bar, and the name Bar did nothing to allay that concern. On the other hand, it was have noted that the terminal hour for on sales had been brought back to 10pm to be consistent with the matrix. Sale of alcohol would be by waiter/waitress service, a 10pm closing hour, no-off sales and a condition making licensable ancillary to the main function of the complex were all welcome measures.
- 6.14 Looking at the application as a whole, together with the proposed conditions, and concessions made at the hearing, the Panel were satisfied that the application was exceptional, which allowed them to depart from the presumption in the Statement of Licensing Policy of no new licences in the Cumulative Impact Area.

The revised application was therefore granted with: -

Conditions consistent with the operating schedule - pages 25 to 27 of the agenda.

The following condition - no sale of shots or cocktails. For the avoidance of doubt, the restriction on the sale of cocktails does not prohibit the sale of traditional drinks such as Gin and Tonic, Whisky and Soda etc.

6.15 **RESOLVED –** The application for a new premises licence was therefore granted for the Brighton Zip (Wire), Dalton's Bastion, Madeira Drive Brighton BN2 IEN in the terms set out above.

The meeting concluded at 12.00pm	
Signed	Chair

LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

2 DECEMBER 2021

Dated this day of