

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

**10.00am 17 MARCH 2022**

**VIRTUAL**

**MINUTES**

**Present:** Councillor Simson (Chair); Moonan and Pissaridou

**Officers:** Emma Grant (Licensing Officer), Liz Woodley (Senior Lawyer) and Clare Chapman (Democratic Services Officer)

**PART ONE**

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

Councillor Simson was appointed Chair for the meeting.

**2 PROCEDURAL BUSINESS**

**2a Declaration of Substitutes**

Councillor Pissaridou declared that she was substituting for Councillor Deane.

**2b Declarations of Interest**

There were none.

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

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).

**RESOLVED** - That the press and public be not excluded from the meeting.

**3 THE FLOUR POT KITCHEN LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)**

In attendance:

Applicant: Oliver Hyde

Making Representation: Jacob Chapman  
Hannah Davis  
John Davis  
Kyla Ellis-Sloan  
Celia Green  
John Griffin  
Jeane Lepper  
Clare Longden  
Toby Peirce  
Julie Withers

3.1 The Panel considered a report of the Executive Director of Housing, Neighbourhoods and Communities which required them to determine an application for the variation of a premises licence at The Flour Pot Kitchen, 1 Kings Parade, Ditchling Road, Brighton, BN1 6JT.

#### **Licensing Officer**

3.2 The Licensing Officer presented the application and summarised the contents of the report. She informed the Panel that all reps had been made aware of the amended hours and of the conditions agreed with Sussex Police.

#### **Representations**

3.3 The Panel heard from a spokesperson on behalf of the majority of the objectors, together with nine other objectors. They expanded upon their concerns as outlined in their representations and in their presentations, and in answer to questions from the Panel provided the following additional information:

- Fiveways was a tranquil neighbourhood, home to families and professionals working shifts and at home.
- Noise emanating from the premises had increased since the café opened, with the early morning movement of tables and chairs (05.00 am to 06.45) and increased deliveries. Bins had been emptied as early as 05.30.
- Residents were accepting of noise during the working day but had an expectation of quiet in the evening. During the working week there was traffic noise from the busy Ditchling Road, which masked noise from the café. On Sundays, it was significantly quieter, and noise carried more easily.
- The outside area on Hythe Road was a particular problem for residents in terms of disturbance and loss of privacy.
- There were a number of licensed premises in the area, including a pub whose outside area could not be used after 21.00

#### **Applicant**

3.4 The Panel heard a brief description of the proposed operation of the site from Oliver Hyde, a founder of the Flour Pot Bakery chain. In his presentation, and in answer to questions he informed the Panel that:

- He had experience of managing many premises and had been a Designated Premises Supervisor (DPS) since 2006.
- In the longer term, Flour Pot's ambition was to open a cookery school on the first floor of the premises, but in the meantime, the aim was to operate a café/restaurant/bar at the site. The profit margin on purely food-led premises was narrow. The premises needed the benefit of an alcohol licence to expand.
- The premises would not operate as a bar and there would be no vertical drinking. The agreed sale of alcohol by waiter/waitress service condition precluded such a use.
- Café bar conditions aligned with the business's casual approach to the sale of food and drink. Restaurant conditions would not be acceptable.
- CCTV was already in place, which covered the outside area.
- Deliveroo was the current delivery partner.
- Recycling collections had been arranged for after 07.00
- A condition limiting deliveries to 07.00 to 19.00 hours would be acceptable
- Music was not played outside
- The gradient in Ditchling Road precluded it from being a suitable outside area
- A condition requiring the Hythe Road outside area to close at 21.00 would be acceptable, as would a "restaurant" condition for that area for the hours 19.00 to 21.00
- There would be a maximum of 8 tables and 4 chairs per table outside.
- The internal lights at the premises were soft.
- He remained available to all neighbours if they had any concerns going forwards and hoped they would get in touch if they had any issues.

### **Closing Submissions**

3.5 Each of the parties were given the opportunity to make their closing submissions and each reiterated the points they had made during the meeting. The Panel then retired to make their decision which is set out below.

### **Decision**

3.6 That the Premises Licence in respect of The Flour Pot Kitchen, 1 Kings Parade, Ditchling Road, Brighton, BN1 6JT, be granted.

### **Reasons**

3.7 The Panel has read all the papers including the report and relevant representations and listened to all the submissions put forward at the hearing. The panel has also had regard to the council's Statement of Licensing Policy (SOLP) and the statutory guidance.

The application is for a new premises licence for the Flour Pot Kitchen, 1 King's Parade, Ditchling Road. The premises are currently open as a café, but the intention is to operate the premises as a café, restaurant and bar. The application seeks permission

for the sale of alcohol for consumption on and off the premises and recorded music. The applicant has agreed reduced hours of operation with the Police as follows: -

Hours for supply of alcohol - 10.00 to 22.00 every day  
Hours premises are open to the public – 07.30 to 22.30 Mon to Sat  
08.00 to 22.00 Sun  
Hours for recorded music – 08.00 to 22.30 Mon to Sat  
09.00 to 22.30 Sun

The Panel has therefore confined its consideration to the reduced hours. Several conditions have also been agreed with the Police to supplement or supersede conditions suggested by the applicant's Operating Schedule at Appendix A of the agenda. Those agreed conditions were published as an Addendum to the agenda. The Licensing Officer advised us that the applicant was not pursuing the application for a tables and chairs licence in Hythe Road, as the site was in the applicant's ownership and not public highway. That application had been for up to 8 tables and 32 chairs, with a terminal hour of 21.00

The premises are situated outside both the Cumulative Impact Zone (CIZ) and Special Stress Area (SSA), so the application falls to be determined on its own merits. A "matrix" approach to licensing decisions has been adopted by the council in its SOLP. It sets out a framework of what the licensing authority would like to see within its area and gives an indication of the likelihood of success to any applicant. For the purposes of the matrix, Fiveways falls within "other areas". The matrix provides a terminal hour of midnight for restaurants, 10 pm for cafés and 11pm for off-licences. The SOLP provides that the matrix will be strictly adhered to, although each application will be considered on its own merits. Departure from the matrix will only be considered in exceptional circumstances.

Twenty-seven representations were received objecting to the application. They were from residents and a local business. The objections touched on all four licensing objectives. We also noted the supporting petition with 133 signatories.

We heard from a spokesperson on behalf of the majority of the objectors, together with a few other objectors. They expanded upon their concerns as outlined in their representations and in their presentations and in answer to questions provided additional information, including:

Fiveways is a tranquil neighbourhood, home to families, professionals working shifts and at home.

Noise emanating from the premises has increased since the café opened, with the early morning movement of tables and chairs (05.00 am to 06.45) and increased deliveries. Bins had been emptied as early as 05.30.

Residents were accepting of noise during the working day but had an expectation of quiet in the evening. During the working week there is traffic noise from the busy Ditchling Road, which masks noise from the café. On Sundays, it is significantly quieter, and noise carries more easily.

The outside area on Hythe Road is a particular problem for residents in terms of disturbance, and loss of privacy.

There are a number of licensed premises in the area, including a pub whose outside area cannot be used after 21.00

We heard a brief description of the proposed operation of the site from Oliver Hyde, a founder of the Flour Pot Bakery chain.

In his presentation, and in answer to questions we were told that:

- He has experience of managing many premises and has been a DPS since 2006.
- In the longer term, Flour Pot's ambition is to open a cookery school on the first floor of the premises, but in the meantime, the aim is to operate a café/restaurant/bar at the site. The profit margin on purely food led premises is narrow. The premises need the benefit of an alcohol licence to expand.
- The premises will not operate as a bar. The agreed sale of alcohol by waiter/waitress service condition precludes such a use.
- Café bar conditions align with the business' casual approach to the sale of food and drink. Restaurant conditions would not be acceptable.
- CCTV is already in place, which covers the outside area.
- Deliveroo is the current delivery partner.
- Recycling collections have been arranged for after 07.00
- A condition limiting deliveries to 07.00 to 19.00 hours would be acceptable
- Music is not played outside
- The gradient in Ditchling Road precludes it from being a suitable outside area
- A condition requiring the Hythe Road outside area to close at 21.00 would be acceptable, as would a "restaurant" condition for that area for the hours 19.00 to 21.00
- There will be a maximum of 8 tables and 4 chairs per table outside.
- The internal lights at the premises are soft.

The Panel recognises that in terms of hours for the sale of alcohol, the application is compatible with the council's SOLP matrix. However, it also recognises residents' concerns about the operation of the premises under the Flour Pot brand. Early morning noise has been a problem for residents, and although the applicant has now made arrangements for rubbish/recycling collection after 07.00 hours, a condition reinforcing the arrangement is a proportionate measure. The Hythe Road outside area needs to be carefully managed, but we consider that the 21.00 closing time, maximum number of tables and chairs and restaurant conditions accepted by the applicant are appropriate measures to address public nuisance concerns. Although external CCTV is already in operation, an express condition requiring it in that location is appropriate to assist management to monitor the area.

Like the objectors, we recognise the need to future proof the licence to ensure that the premises cannot become a pub or off – licence. The agreed waiter/waitress condition is incompatible with a pub use. However, were we to allow unlimited off sales, we accept that there is a risk that the premises could become an off-licence, so strict conditions to limit off sales are necessary. We note that the applicant agreed with the Police that alcohol off sales by way of delivery are only to be permitted when it forms part of a substantial food order. We propose to limit off-sales of alcohol from the premises only as part of a substantial food order.

In all the circumstances it is appropriate for the Panel to grant the application subject to the following conditions:

- i) Hours and conditions agreed with the Police as set out in Addendum1, amended as shown in bold below: -

Condition 7 a) to read (a) Digital CCTV and appropriate recording equipment to be installed in accordance with Home Office Guidelines relating to UK Police Requirements for Digital CCTV System (PSDB Publication Number 09/05), operated and maintained throughout the premises internally to cover all public areas, including the entrance to the premises **and the external Hythe Road area set aside for the consumption of food and drink**. The system shall be on and recording at all times the premises licence is in operation

- ii) No more than 8 tables to be set out in the external Hythe Road area marked in pink on the plan at any time.  
iii) No more than 4 chairs per table to be set out in Hythe Road at any time.  
iv) Hythe Road tables and chair to be cleared by 21.30 hours each day.  
v) Hythe Road tables and chairs not to be set out before 07.00 hours.  
vi) Between 19.00 and 21.00 hours, in the external Hythe Road area, the sale of alcohol shall be ancillary to a seated substantial table meal served by waiter/waitress service.  
vii) The Hythe Road area shall be monitored regularly.  
viii) No music shall be played outside the premises.  
ix) No lighting to be installed covering the Hythe Road external area.  
x) No Rubbish or recycling collections between 19.00 and 07.00 hours.  
xi) No deliveries to the premises between 19.00 and 07.00 hours.  
xii) Off-sales of alcohol from the premises only to be permitted when it forms part of a substantial food order.

We note the residents' suggestion that rubber feet be attached to the external chair and table legs to reduce noise transmission. We are not going to make that a condition but recommend that the applicant gives the idea careful consideration.

The Panel believes that the above conditions are appropriate for the promotion of the licensing objectives.

**Note:** The Legal Adviser to the Committee confirmed that the decision letter to the applicants would include details of the appeal rights available to them.

The meeting concluded at 12.35pm

Signed

Chair

Dated this

day of