

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

10.00am 14 APRIL 2022

VIRTUAL

MINUTES

Present: Councillors Simson (Chair) Phillips and Pissaridou

Officers: Emma Grant, Licensing Officer; Rebecca Sidell, Lawyer; Penny Jennings, Democratic Services Officer and Francis Mitchell Trainee Democratic Services Officer

PART ONE

1 TO APPOINT A CHAIR FOR THE MEETING

1.1 Councillor Simson was appointed Chair for the meeting.

2 PROCEDURAL BUSINESS

2a Declaration of Substitutes¹

2.1 Councillor Phillips she was substituting for Councillor Deane.

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 R&A GLOBAL FOOD LTD LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

- 3.1 The Panel considered a report of the Executive Director, Housing, Neighbourhoods and Committee which required them to determine an application for a New Premises Licence under the Licensing Act 2003 for Global Food Ltd, 17 Preston Road, Brighton BN1 4CE.

Licensing Officer

- 3.2 The Licensing Officer explained that the application proposed use of the ground floor shop, predominantly selling groceries, household items and international food, with the area used for the sale of alcohol to be approximately 2 to 4 metres in size. The alcohol would be kept in the chiller situated on the right-hand side as you entered the shop. It was proposed that the alcohol would only make up 5 to 15% of the business. The premises fell within one of the Special Stress Areas, this was deemed as an area of special concern in terms of levels of crime and disorder and public nuisance experienced within them. Six representations had been received from local residents, a local business, Sussex Police and the Licensing Authority.
- 3.2 The representations received had expressed concerns relating to the licensing objectives of the Prevention of Crime and Disorder, Prevention of Public Nuisance, Protection of Children from Harm and upholding the Statement of Licensing Policy, Special Stress Area (SSA). Full details of the representations received were included in Appendix C to the report.
- 3.3 In answer to questions it was explained that that the applicant held a personal licence and that the premises had held a licence previously from 2007. The licence had then been varied in 2015 and subsequently revoked in 2017. Further applications had been made and refused in 2018 and 2019 respectively and an application made in 2020 had been withdrawn before being considered by a Panel.

Police Representation

- 3.4 The Police representatives referred to their representation and highlighted the challenging nature of the area and the high levels of crime and disorder within it. This stretch of Preston Road was included within the extension of the SSA at the recent review of the Statement of licensing policy. Evidence was presented of the high number of licensed premises and the increase in the number of reported alcohol related crimes. The police maintained that an additional premises selling alcohol would add to negative cumulative impact within the area. The applicant had not demonstrated any understanding of the licensing objectives or provided robust reasons for making an exception to existing policy In answer to questions the Police confirmed that whilst this premises had given cause for concern in the past there were no indications that the present business had any association with them.

Licensing Authority Representation

- 3.5 The representative in attendance on behalf of the licensing authority fully supported the concerns expressed by the Police and were concerned that the application did not meet the requirements of the council's licensing policy as the applicant has not addressed the policy issues within their application and it was contrary to the policy. The Matrix within

the policy stated that no new off-licence applications should be permitted within the SSA. The licensing authority contended that no exceptional circumstances had been demonstrated. The representations from the local business and residents had expressed concerns that an additional alcohol outlet would add to existing problems in the locality. They considered that the conditions put forward by the applicants were those which would expect any premises should adhere to and did not illustrate exceptional circumstances.

Submission by the Applicant

- 3.6 The Solicitor acting on behalf of the applicants referred to written submissions in which in their view the local policy was addressed. It was contended that this premises which sold predominantly Afro-Caribbean foods, hair and beauty products should not be classed as an off licence as alcohol would be an ancillary part of the business. It was stated that it was akin to a Tesco Express. A condition was suggested to reinforce this, and further conditions were proposed including a sensible on strength condition. It was considered that the premises would have a community benefit as it would cater for the Afro-Caribbean community. It would be unfair to link this application with misdemeanours of the previous licence holders. There was no connection between this applicant and previous licence holders, and this was a worthy applicant. The applicant had another premises at 4 Preston Road which sold alcohol and the proposed DPS was also the DPS for this premises.

Closing Submissions

- 3.7 No further submissions were made and therefore all parties made their closing submissions. The Licensing Officer reiterated that that Panel were required to determine the application whilst being mindful of the premises location in the SSA, the need to fulfil the licensing objectives and to determine whether exceptional circumstances had been shown for departure from the Statement of Licensing Policy.
- 3.8 The Police representative and representative in attendance on behalf of the Licensing Authority re-iterated their concerns in respect of the application and the applicant made a closing statement in support of their application.

The Decision

- 3.9 The Chair explained that the Panel had considered the report of the Executive Director of Neighbourhoods, Communities and Housing and the additional documentation submitted on behalf of the Applicant. It had listened carefully to all the points and submissions made. In reaching its decision, it has had due regard to the Council's Statement of Licensing Policy (SOLP) and section 182 guidance.
- 3.10 The application was for a new premises licence for 17 Preston Road, Brighton, authorising the sale of alcohol off the premises Monday to Sunday 09:00 to 23:00 hours. The application was within the Special Stress Area (SSA) as defined in the Statement of Licensing Policy, an area of concern to the licensing authority because of the relatively high levels of crime and disorder and nuisance experienced with in it. New and varied applications for premises and club premises certificates within the SSA will not be subject to the presumption of refusal, but operators will be expected to pay special

attention when drawing up their operating schedules and to make positive proposals to ensure that their operation will not add to the problems faced in these areas.

- 3.11 Representations had been received from Sussex Police, the Licensing Authority, a local business and local residents. The representations raised the licensing objectives of the prevention of public nuisance, prevention of crime and disorder, and the protection of children from harm, the location of the premises within the SSA and the history of the premises. The police had highlighted the challenging nature of the area and the high levels of crime and disorder within it. This stretch of Preston Road was included within the extension of the SSA at the recent review of the Statement of licensing policy. Evidence had been presented then of the high number of licensed premises and the increase in the number of reported alcohol related crimes. The police had maintained that an additional premises selling alcohol would add to negative cumulative impact within the area.
- 3.12 The licensing authority were in agreement with this assessment and were concerned that the application did not meet the requirements of the council's licensing policy as the applicant has not addressed the policy issues within their application and it was contrary to the policy. The Matrix within the policy stated that no new off-licence applications should be permitted within the SSA. The licensing authority contended that no exceptional circumstances had been demonstrated. The representations from the local business and residents had expressed concerns that an additional alcohol outlet would add to existing problems in the locality.
- 3.13 The applicant's solicitor had referred to written submissions in which the local policy was addressed. It was contended that this premises which sold predominantly Afro-Caribbean foods, hair and beauty products should not be classed as an off licence as alcohol would be an ancillary part of the business. It was stated that it was akin to a Tesco Express. A condition was suggested to reinforce this, and further conditions were proposed including a sensible on strength condition. It was considered that the premises would have a community benefit as it would cater for the Afro-Caribbean community. It would be unfair to link this application with misdemeanours of the previous licence holders. There was no connection between this applicant and previous licence holders, and this was a worthy applicant. The applicant had another premises at 4 Preston Road which sold alcohol and the proposed DPS was also the DPS for this premises.
- 3.13 The Chair stated that the Panel had given careful consideration to this application on its merits and in light of the concerns raised. The main issue for the panel was whether a further premises selling alcohol would have a detrimental effect on the area, which was one of concern within the SSA, and whether exceptional circumstances had been shown to depart from the policy. The panel believed that the concerns raised by the responsible authorities and local residents in relation to this application were extremely valid. A further premises selling alcohol for consumption off the premises was likely in the Panel's opinion to add to the problems of public nuisance and anti-social behaviour in the area and thus undermine the licensing objectives. The panel had taken into consideration the conditions offered and submissions made. The conditions in the application were not particularly relevant and those subsequently offered were not considered adequate to mitigate the risk. Furthermore, the panel did not consider that exceptional circumstances had been shown in this case. While the Afro-Caribbean character of the premises was noted, it would still seem to envisage operating in the

same way as many outlets such as Tesco Express which the Panel would consider to come within the definition of 'off-licence'. In the Panel's view the meaning of 'alcohol sale ancillary to business activity' in note 5 to the Matrix would not cover convenience store type operations. The Panel also had concerns about the day-to-day management and staffing proposals for the premises given that the DPS was also the DPS for the premises at 4 Preston Road.

- 3.14 There was an interesting discussion during the hearing about the licence at 4 Preston Road and whether this might be relinquished as part of this application. However, it was generally felt, and the panel agree, that this would require further consideration and consultation to explore whether such an option may be possible and could amount to exceptional circumstances. The main concerns for the Panel centred upon the location of the premises within the SSA and in an area of high levels of crime and disorder and anti-social behaviour, with many other licensed premises in close proximity and other outlets where people congregate. The grant of this application was considered likely to add to existing problems and was therefore refused.
- 3.15 **RESOLVED** – That the application for a new premises licence for Global Food Limited, 17 Preston Road, BN1 4QE be refused for the reasons set out above.
Note: The Legal Adviser to the panel advised the applicant that they would receive notification of the panel's decision in writing with details of their appeal rights attached.

4 VARIATION OF PREMISES LICENCE, 2 CHURCH STREET, BRIGHTON

- 4.1 The Panel considered a report of the Executive Director Housing, Neighbourhoods and Communities requiring that the Panel determine an application for variation of a premises licence under the Licensing Act 2003 in respect of 2 Church Street BN1 1UJ.

Licensing Officer

- 4.2 The Licensing Officer explained that the application was for a Variation of a Premises Licence under the Licensing Act 2003. The application proposed a Cafe with Cocktails situated in the North Laine serving food and drink to the local community and theatre goers. Seeking modest extension to the current opening hours of the premises up to 11pm Mon-Sun along with all current licensable activities (Performance of recorded music & sale by retail of alcohol) under the same conditions consistent with the Operating Schedule. E.g., Substantial food shall be available at all times, table service only, no vertical drinking, regular checks of outside areas to clear glasses and no off-sales. The applicants had explained that their intention was to provide value to the local, art We are working hard to provide value to the local, art and visitor economy and to support the creative industries with tailored events. The premises fell within the Cumulative Impact Zone(CIZ). However, the special policy relating to this area could be overridden in exceptional circumstances. The effect of this special policy was that there was a presumption that applications would be refused. This presumption could be rebutted by the applicant if they could show that their application would have no negative Cumulative Impact.
- 4.3 It was noted that 3 opposing representations and 5 supporting representations had been received from local residents, a Resident Association, Sussex Police and the Licensing Authority. Representations received had expressed concerns relating to Prevention of Crime and Disorder, Cumulative Impact, Public Safety, Prevention of Public Nuisance and the Protection of Children from Harm.

Police Representation

- 4.4 The Police emphasised the public health data for the area which was ranked highest for police recorded alcohol related incidents and alcohol suspected ambulance call outs. They were concerned that this could become a pub by stealth, concerns echoed by the Licensing Authority and the NCLA. Sussex Police believed that if granted, persons would be consuming alcohol for longer hours than currently permitted without the need to purchase substantial food. Their concerns were heightened when the venue was operating more as a bar rather than as a genuine café. They were prepared to support opening hours up to 22:00hrs but this had been turned down by the applicant.

North Laine Community Association Representation (NLCA)

- 4.5 The NCLA were concerned too about the impact of increased hours for a premises operation which was in their view a pub by stealth in their area already saturated with licensed premises which were causing serious problems of public nuisance, crime and disorder and disturbance to residents. Those opposing the application also pointed to the Special Policy and the Matrix which did not support a café beyond 22:00 hours in the CIZ or a pub in any form

Licensing Authority Representation

- 4.6 The Licensing Authority representative, Donna Lynsdale stated that the Licensing Authority shared the concerns of the Police and did not believe that the applicant had demonstrated that there were exceptional circumstances to justify departing from policy.

Applicant's Representation

- 4.7 The applicant explained that he had taken over the lease in 2019 and the licence in 2021. He had refurbished the premises but had replaced an existing bar and removed a small kitchen which was next to the toilet in favour of improving the toilets and incorporating a small kitchen area into the bar. There was no oven but he planned to install a grill for some hot food options. He had removed branding references to a wine/cocktail bar and planned to market the premises as more of a café with cocktails. There was a hot drinks machine. The premises was small with seating and no vertical drinking and waiter waitress service. He was aware of the policy restrictions but felt later hours would not impact negatively and he hoped to attract theatre goers. He had proposed some additional measures such as membership of the Business Crime Reduction Partnership and other community initiatives. Those supporting the application stressed it was a quiet, and relaxing café atmosphere and they supported later hours generally and as an ideal venue for theatre goers.

Closing Submissions

- 4.8 There were no further questions nor discussion and the Licensing Officer therefore made their closing submission reminding the Panel of the issues they were required to

consider. The other parties who had made representations then gave their closing submissions and reiterated the points which they had already made.

The Decision

- 4.9 The Chair explained that the Panel has considered all the papers and relevant representations and listened to the submissions made. The application site lay within the cumulative impact zone (CIZ). The Policy stated that applications for variations which were likely to add to the existing cumulative impact would be refused following relevant representations. This presumption could be rebutted by the applicant if they could show that their application would have no negative cumulative impact. This special policy could only be overridden in exceptional circumstances. However, the policy was not absolute. The panel must consider the individual circumstances and merits of the application. If an application was unlikely to add to the cumulative impact of the area, it might be granted.
- 4.10 The application sought to extend the sale of alcohol and opening hours (and recorded music) to 23:00 hours every day with later extensions for Christmas Eve and New Year's Eve. Currently the premises was open from 08:00 to 21:00 Monday to Thursday and 08:00 to 22:00 Friday and Saturday with the same hours for sale of alcohol. Representations against the application were received from Sussex Police, the Licensing Authority, and the North Laine Community Association (NLCA). 5 supporting representations were received. The representations had voiced concerns about the location of the premises within the CIZ and the cumulative impact of later hours in an already saturated area. A key concern for all was that the character of the premises was becoming less of a café and more of a cocktail/wine bar. This was apparent in the publicity for the premises, the sign at the premises and the layout of the premises with no kitchen. The Police and Licensing Authority emphasised the public health data for the area which was ranked highest for police recorded alcohol related incidents and alcohol suspected ambulance call outs.
- 4.11 The NCLA were concerned too about the impact of increased hours for a premises operation which was in their view a pub by stealth in their area already saturated with licensed premises which were causing serious problems of public nuisance, crime and disorder and disturbance to residents. Those opposing the application also pointed to the Special Policy and the Matrix which did not support a café beyond 22:00 hours in the CIZ or a pub in any form. Those supporting the application stressed it was a quiet, and relaxing café atmosphere and they supported later hours generally and as an ideal venue for theatre goers.
- 4.12 The applicant explained that he had taken over the lease in 2019 and the licence in 2021. He had refurbished the premises but had replaced an existing bar and removed a small kitchen which was next to the toilet in favour of improving the toilets and incorporating a small kitchen area into the bar. There was no oven but he planned to install a grill for some hot food options. He had removed branding references to a wine/cocktail bar and planned to market the premises as more of a café with cocktails. There was a hot drinks machine. The premises was small with seating and no vertical drinking and waiter/waitress service. He was aware of the policy restrictions but felt later hours would not impact negatively and he hoped to attract theatre goers. He had

proposed some additional measures such as membership of the Business Crime Reduction Partnership and other community initiatives.

- 4.13 The panel considered the application within the context of the special policy and in light of the representations made. The panel appreciated the concerns of those making representations and considered that an extension of hours to 23:00 would not be appropriate in this challenging area and could see no exceptional circumstances to depart from the policy in this case. However, the panel considered that an extension of hours to 22:00 every day for sale of alcohol along with some further conditions to reinforce the café nature of the premises is appropriate and consider that such an extension would not be likely to add to cumulative impact or undermine the licensing objectives. The conditions are those which the police proposed but with the following amendments:

Hot and cold non-alcoholic beverages are to be available at all times.

Food menus must be clearly displayed within the premises and the menus are to include hot food options.

The panel noted that there was a small pavement licence for the premises and wished to stress that the licence holder must continue to abide by the specific conditions on that licence which may be for an earlier terminal hour.

The panel considered that granting this modified variation would thus be within our policy for cafes in the CIZ and reinforced the café nature of the premises which was what those making representations were seeking.

- 4.14 **RESOLVED** – That a variation to the premises licence of 2 Church Street, Brighton BN1 1UJ be granted in the terms set out above.

Note: The Legal Adviser to the Panel advised that the applicants would received details of the panel's decision in writing with details of their appeal rights attached.

The meeting concluded at 12.25pm

Signed

Chair

Dated this

day of