

BRIGHTON & HOVE CITY COUNCIL

LICENSING PANEL (NON LICENSING ACT 2003 FUNCTIONS)

10.30am 19 APRIL 2013

COMMITTEE ROOM 1, BRIGHTON TOWN HALL

MINUTES

Present: Councillor Deane, Gilbey and Marsh

Officers: Rebecca Sidell, Lawyer; David Fisher, Highways Enforcement Officer; Nathan Birch, Democratic Services Officer.

Applicant: Siavash Nikkhah, Mr M Nikkhah, Tony Sallows

Representations: Councillor Ollie Sykes, Richard Gamper, Juliette Hunting

PART ONE

4. TO APPOINT A CHAIR FOR THE MEETING

Councillor Deane was appointed Chair for the meeting.

5. PROCEDURAL BUSINESS

5a Declaration of Substitutes

There were none.

5b Declarations of Interest

There were none.

5c 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 not be excluded from the meeting during the consideration of Item 6.

6. CAPS 5-6 WESTERN ROAD

- 6.1 The Highways Enforcement Manager provided a summary of the matter which concerned CAPS Bar, 5-6 Western Road, Hove and their retrospective application to place tables and chairs on the highway, as set out in the printed agenda papers. The premises have 1.3m of private land to the front of the premises and the application was for a license for an additional 0.5m. The applicant was currently occupying this space and this application encompassed that current use. There had been several objections from local residents groups and a local councillor. The Highways Enforcement Manager also circulated the current standard Highways Licensing Conditions.
- 6.2 In response to questions from the Panel the Highways Enforcement Manager confirmed that any barrier should be within the licensed area and not “external.” The application would allow the licensee to maintain their current boundary.
- 6.3 In response to questions from Councillor Sykes the Highways Enforcement Manager confirmed that the area must include a barrier to prevent overspill onto the remaining highway, the type of barrier being governed by conditions and highway controls. The issue of the outstanding planning application was a separate matter to the licensing of the highway, but if refused then the owners would have to remove the current structure.

Representations from Interested Parties – Local Councillor

- 6.4 The Chair invited Councillor Sykes to make his representation. Councillor Sykes was concerned at the formalisation of the “taking of public space” in this manner and believed that a narrowing of the footpath in this high volume area was inappropriate. He believed that the applicant could produce another solution to managing their outside space without this extension into the highway.

Representations from Interested Parties – Local Residents Associations

- 6.5 The Chair invited Mr Gamper to make his representation on behalf of Friends of Brunswick Square & Terrace and Friends of Palmeira & Adelaide. Mr Gamper believed that this application went beyond tables and chairs. The current structure was a substantial wooden terrace, which the applicant sought to retain. In his view the structure was permanent, constructed with bolts and screws which are now covered to prevent dismantlement. He believed it would be impossible to remove and store the structure in less than two hours.
- 6.6 Mr Gamper added that this structure was a substantial obstruction on the current highway in a busy area. The reduction of the pavement width to 1.65m would not be acceptable or adequate. He expressed concern that there being no mention in the report of any health and safety issues, or of any risk assessment being carried out. He urged the Panel to give refusal serious consideration.
- 6.7 The Chair invited Ms Hunting to make her representation on behalf of the Lansdowne Area Residents Association. Ms Hunting also believed that health and safety was a major concern. She highlighted that the road had a total of 16 regular bus routes, making the road particularly busy. Any reduction in the footpath would add to the pedestrian’s risk.

- 6.8 Ms Hunting believed the demographic in the area was changing, with more families and children using the footpaths. The length of the premises may also have result in the loss of turning space required for wheelchair users, as per Highways Policy. She was also concerned that the views of the Police had not been sought on this matter.
- 6.9 In response to questions from the Panel the Interested Parties gave the following responses. The residents groups were particularly concerned with pedestrians stepping into the road due to any obstruction. The groups highlighted the fact that the current structure had been in place for around 6 months. Previously the structure was portable and contained within the private frontage. They understood that planning had been refused. A planning appeal was pending but there was currently no record of such an appeal.
- 6.10 The Chair invited the applicant to make their representation. The applicant asked the Panel to take note of a petition signed by customers and local residents in support of the extension to the front of the premises. The application contained was for an additional 0.5m, which would allow the current barrier placement. The applicant explained that the barrier allowed the business to control patrons and prevent inappropriate interaction between patrons and the public.
- 6.11 The applicant did not believe this was a small narrow gap, but with the additional 0.3m of the kerb there was a total width of 1.95m. The applicant believed that by not having traditional benches or screens and poles, the risk of tripping was reduced. The additional lighting in the area was also an enhancement to the safety of the area.
- 6.12 In response to questions from the Panel the applicant supplied the following information. It was confirmed that this area was used by patrons who wished to smoke. The seating in the area was built into the planters and faced inwards towards the premises. The confirmed this was not a fully enclosed space, but there was an awning above the seating area. The applicant believed they were providing an outdoor space of equal quality to that indoors. The additional 0.5m was required to allow the planters to be retained and better manage the space.
- 6.13 The applicant believes they received relevant advice from both Highways and Planning regarding the construction of the current seating area, but accepted that permissions in both areas should have been sought in advance.
- 6.14 In response to questions from Councillor Sykes the applicant confirmed that they did also employ door staff to prevent overspill in the evenings. The applicant also added that it would have been cheaper to have benches, but they chose to supply a superior area for patrons. They did not believe this would become the norm in the city due to the cost. With regard to using the public highway the applicant did not view their application as any different as many others in Brighton and Hove.

Summaries

- 6.15 The Highways Enforcement Manager reiterated that this was for the Panel to weigh up the positives and negatives in the application. If granted and the current structure is retained then control of customers would be maintained. Against this there was the reduction in available highway on a busy stretch of road.

- 6.16 Councillor Sykes offered a joint summary for the interested parties. They did not believe this formalised reduction in public space was appropriate in the context of this busy area. It was accepted, by the use of door staff, that overspill was not totally impossible. The residents particularly felt unhappy at the precedent that this structure may set in the area.
- 6.17 The applicant believed that the use of the additional space would enhance the premises, producing a safer environment for patrons and the public.
- 6.18 The Lawyer to the Panel advised that each case be considered on its individual merits.

Decision

- 6.19 The Panel has considered this application and the report carefully, along with the written objections, and has listened to all the arguments presented today. The Panel have heard concerns expressed about the nature of the structure already in place. The main concerns of the objectors are the reduction in the width of the pavement and the safety issues they consider this presence on a busy road. The application seeks encroachment onto the pavement of 50cm (0.5 metres). If granted this leaves a width of 1.65metres of pavement not including the kerb. Taking into consideration the policy guidelines, which stipulate a minimum of 1.3metres unobstructed pavement and the nature of the area, we do not consider that such an encroachment is unreasonable or that it presents safety issues. The panel therefore agree to grant a licence to place objects on this area of pavement. However, this does not mean that we are licensing the current structure that is in place. This structure will be subject to planning decisions. There are concerns about the permanent nature of the structure and the ability to easily remove it as stipulated in condition 3.3 of the Highways General Standard Licensing Conditions. The Panel wish to clearly to place a condition on the licence that any structure finally placed in this area should be visibly surrounded and retained by a barrier at all times which must meet officer approval.

The meeting concluded at 3.38pm

Signed

Chair

Dated this day of