

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

10.00am 14 MARCH 2017

COMMITTEE ROOM 1, BRIGHTON TOWN HALL

MINUTES

Present: Councillor O'Quinn (Chair); Cattell and Wares

Officers: Rebecca Sidell (Lawyer), Sarah Cornell (Licensing Officer), and Caroline De Marco (Democratic Services Officer).

PART ONE

75 TO APPOINT A CHAIR FOR THE MEETING

75.1 Councillor O'Quinn was appointed Chair for the meeting.

76 PROCEDURAL BUSINESS

76a Declaration of Substitutes

76.1 There were none.

76b Declarations of Interest

76.2 There were none.

76c Exclusion of the Press and Public

76.3 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).

76.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of Item 77.

77 MISTY'S, 116 CHURCH ROAD, HOVE- REVIEW OF A PREMISES LICENCE

77.1 The Panel considered a report of the Executive Director, Neighbourhoods, Communities and Housing in relation to an application for a review of a Premises Licence for Misty's, 116 Church Road, Hove. Present at the hearing were: James Rankin, Barrister for Misty's; Doug Simmonds, Licensing Consultant; Afshin Kianifard – premises owner; Mario Dato, Manager; and Maged Safar, new DPS. Sgt Morgan, Jean Irving, Police Licensing Manager and Peter Savill, Police Barrister represented Sussex Police.

Introduction from the Licensing Officer

77.2 The Licensing Officer highlighted the following:

- Sussex Police had called a review of the premises licence. No representations had been received. The proceedings set out in the 2003 Act for reviewing Premises Licences and Club Premises Certificates, represented a key protection for the community where problems associated with the Licensing Objectives occurred after the grant or variation of a Premises Licence or Club Premises Certificate. Where the Licensing Authority considered that action under its statutory powers was necessary it could take the following steps:
Modification of licence conditions – adding, modifying or removing conditions
Exclusion of a licensable activity – this could include limiting hours or activities in all or part of the premises
Removal of a designated premises supervisor
Suspension of the licence for a period not exceeding 3 months
Revocation of the licence
Or do nothing
- Since the review was called, Sussex Police had reached a Memorandum of Agreement containing further conditions with Mr Kianifard. The memorandum had been circulated to all parties on 9th March.
- It was expected that the local authority should seek to establish the cause for concern and take remedial action to deal with these causes.
- The Council's Licensing Enforcement Policy has adopted the approach set out by the Home Office and DCMS document entitled "Problem Premises on Probation - Red and Yellow Cards; How it would work". The document sets out to encourage partnership working in identifying problem premises and lists steps to be taken in first and second intervention measures together with a list of possible tough conditions. First intervention may be suspension with conditions (yellow card) and second intervention would look to revoke a licence (red card). The guidance made it clear that proposed interventions would not prevent the giving of an instant red card in an appropriately serious case.

Questions to Licensing Officer

77.3 There were no questions

Statement from Sussex Police

77.4 Mr Savill addressed the Panel and stated the following:

- The application for a review had been submitted due to ongoing problems at the premises. These problems had deteriorated to a serious level. Since the review was requested a Police intervention meeting had been held with Mr Kianifard and a Memorandum of Agreement reached. There had been a degree of recognition that there had been problems and a degree of pragmatism about the proposed conditions. Sussex Police had no wish to have the premises permanently de-licensed.
- At this stage, Sussex Police were content that the new conditions including a new Designated Premises Supervisor and SIA door staff should be appropriate to comply with the licensing objectives.
- The Premises Licence Holder had agreed to a voluntary closure of licensable activity at Misty's commencing on Friday 17th March and ending on Monday 27th March 2017. There could be a greater level of suspension; however there was an appeal process. A longer period of suspension may not be upheld by the Magistrates Court in six months time if the case went to appeal. Sussex Police therefore asked the Panel to agree the Memorandum of Agreement.

Questions relating to Sussex Police Statement

77.5 The Panel Lawyer was asked if the Panel could hear from the licence holder before looking at the Memorandum of Agreement. The Panel Lawyer stated that procedure was in the hands of the Chair. There was no reason why the Panel should not hear from the licence holder.

77.6 In answer to questions Sussex Police confirmed the following:

- Sgt Morgan confirmed that the problems at the premises had taken up a disproportionate amount of Police time.
- It was explained that the garden was a part of the premises. An area at the back of the premises was open during opening hours.
- It was confirmed that alcohol was not sold in the garden.
- Concern was expressed by the Panel at the way women were treated at Misty's. They had been allowed to drink more and more alcohol. The Police were asked if this happened in other venues. Sgt Morgan stated that Sussex Police were also concerned and were proposing new conditions such as door staff.
- In answer to a question about incidents linked to Misty's, Sgt Morgan stated that when the Police looked at evidence they were very careful in deciding if there was a link with the premises. They had not included incidents where there is not strong evidence.
- The Panel expressed concern about drug use and asked the Police if they thought there were drug dealers on the premises. Ms Irving replied that this was something that was a great concern to the Police. Swabbing had been carried out using the same kit that was in use at airports. The Memorandum of Agreement included conditions relating to drug searches due to the concern of the Police about this issue. The Police would continue to carry out checks and would not hesitate to call for another review if necessary. However, because of the measures put in place the Police considered that problems could be addressed. Clubscan was being proposed and would act as a deterrent to drug dealers who would not want their ID scanned.

- The Panel made the point that there had been a scanner before which had not been used. The Police were asked if it would be used now. Ms Irving explained that this was why a condition had been proposed. The scanning machine at Misty's had a history of breaking down. The Police had checked and verified this. If the equipment broke down in future, the Police would need to be advised. The scanner would only be used when door staff were working.
- Ms Irving explained that the scanner checked 300 different types of ID from different countries. The scanner read the card and showed a persons age. It was able to read pass cards and driving licenses. Everyone would be scanned. Only one type of scanner met the conditions. There had been a problem before caused by a software error which was highly unusual. These problems had now been resolved.
- The Police were asked if they had considered restricting the hours the garden was in use. Ms Irving explained that conditions should be necessary and proportionate. There had been no noise complaints about the garden area.
- The Panel pointed out that there had been a number of incidents in the garden as there had been no supervisory staff there. These incidents could be reduced by curtailing the hours. Sgt Morgan replied that the garden was a large space and a nice area to sit. The Police had looked at the right number of door staff for the premises, including the garden and the upstairs area as well as the front door.
- The Police were asked how the garden was separated from the main building. Sgt Morgan explained that the garden looked enclosed and was like an annex attached to the back of the premises.
- It was pointed out that 69% of incidents had occurred after 11pm yet the hours now suggested were 12.30 and 1.00am. Ms Irving stated that the Police had spent a great deal of time in mediation. The question the Police had to consider was whether they wanted to see a small premises go out of business or whether a change of management meant that the ethos of the business would change. Door staff, scanners and increased CCTV were an expensive investment for a small business. The Police had decided that it was more important to keep the business trading safely, rather than place onerous conditions on the licence. The Police also had to consider the appeal process. Appeals could take around six months to be heard. During that time the management could increase door staff and bar staff and were likely to win the appeal. If the Memorandum of Agreement was agreed by the Panel, changes would happen very quickly whereas if the case went to appeal issues could continue. The Police would be monitoring the premises and one incident such as an assault or a drugs swab would result in another review.
- The Police were asked whether a 10 day suspension would be a deterrent. Ms Irving replied that the Police had to consider whether a longer suspension would put the premises out of business. The 10 day period would cover a week plus two weekends. It was up to the Panel to decide if this was sufficient. It was considered as a voluntary closure rather than a suspension.
- Reference was made to page 3 of the Memorandum of Agreement in relation to Polycarbonates. The original conditions had banned the use of glass. The new conditions allowed the use of sparkling wine and champagne bottles. Sgt Morgan stated that the Police wanted to mitigate risk. Most glass attacks were carried out with beer bottles. It was more difficult to smash a champagne bottle. The Police saw this as a compromise. It was about controlling the more dangerous articles.

- It was suggested that the reasoning of the Police focused more on financial viability rather than the safety of customers. Sgt Morgan replied that the Police wanted to remove bottles that were most likely to cause injury.
- Sgt Morgan confirmed that the equipment used for drug searches was fool proof and was used by the Homes Office.
- The Police were asked why they had now agreed to fewer door staff. They had originally asked for two door staff & this had now been reduced by 1 with an extra person at 11.00pm. Sgt Morgan explained that if the premises was run properly the numbers of door staff should be sufficient. Ms Irving explained that Misty's was a late bar and there would be a need for door staff later in the evening.
- It was pointed out that there were 39 incidents between 1st January 2015 to 19th January 2017. It was also pointed out that a serious brawl had taken place on 20th February 2016. The Police were asked why the venue had not been reviewed before. Ms Irving stated that she had asked serious questions as to why the premises had not been closed on the night of 20th February 2016. The incident met the criteria for the premises to be closed instantly. At the time Sgt Morgan was not a Sgt in the licensing unit and Ms Irving had not seen the CCTV evidence until a few months ago. Sgt Morgan had suggested that there should be a review five months ago and Ms Irving had said there was a need to monitor the premises and organise further drug readings.
- Sgt Morgan stated that it could now be seen from court records that there were serious injuries in some of the incidents, however this would not necessarily be obvious on the night. On the night of the serious brawl on 20 February 2016, there had been no witnesses and no victims who had come forward.
- The Police were asked what evidence the licence holder had produced to convince the Police of financial hardship in connection to the original conditions. Ms Irving stated that there was no evidence, only face value.

DVD – Incident on 20th February 2016

77.7 At this point in the proceedings the Panel were shown a DVD of CCTV evidence from the night of 20th February 2016 when a serious fight had taken place in the beer garden.

Representation from Licence Holder

77.8 Mr Rankin addressed the Panel, and made the following points:

- The event on 20th February 2016 was not the usual sort of incident that happened at the premises. Mr Rankin considered the brawl was premeditated and due to a longstanding feud.
- The Police had been extremely helpful and taken a textbook approach.
- A reading of the papers might lead the Panel to think that the staff could not care less. This was not true. When the Police intervened Mr Kianifard responded.

- Mr Rankin referred to an email from DC Steve Amner sent on 30 December 2016 following the GBH incident on 23 December 2016. This showed that Mr Kianifard was not the sort of person who was uncooperative with the Police.
- Mr Rankin stated that operators fell into two categories. Those who could not care less and others who like Mr Kianifard who were proactive.
- Mr Rankin accepted something went wrong at the premises but did not accept the evidence in its entirety. For example, reference had been made to someone being on a BCRP list when this was not the case. However it was accepted that a person was asked to finish a drink in one minute.
- Mr Rankin stated that the situation regarding the garden area needed to be viewed proportionately. There was no residential element in the review and the Police had stated that it was not reasonable or proportionate to close the garden as it was an integral part of the premises. The important thing to consider was how it was managed.
- Mr Rankin referred to the DVD showing CCTV evidence of the incident on 20th February 2016 and stated that he was shocked that there had been no intervention by door staff. As a result it had been decided that the head doorman should be dismissed and door staff changed.
- Mr Rankin stressed the importance of good door staff and asked if there was any point in having three door staff at 8pm when the premises was empty. It had been agreed to stagger the door staff depending on the numbers in the premises throughout the evening.
- Mr Rankin stated that a closure of 11pm would kill the business. He stressed the need for good conditions.
- Mr Rankin referred to the ID Scanner. Ms Irving had spoken to employees of the company supplying the scanner who had confirmed that the scanner was faulty.
- Mr Kianifard did not resist change but wanted to assist the Police in solving problems. The loss of trading hours would be an enormous deterrent. Mr Rankin stressed that it was important how licensees reacted to drugs within a premises. Mr Kianifard had responded to drug swab readings by revamping the toilet area so it was difficult for people to take drugs.
- Mr Kianifard accepted the need for a new Designated Premises Supervisor and CCTV would be upgraded. With regard to polycarbonates the Police had risk assessed the situation and were content that champagne and sparkling wine bottles could be an exception. Mr Rankin also asked for a period of grace with regard to cocktail glasses as there were currently no polycarbonate cocktail glasses available.
- There were now four personal licence holders who were trained. There would be zero tolerance to drugs and searches would be carried out as set out on page 50 of the agenda. Drug searches were implemented in December 2016. There was already an incidents log and all staff members had been trained.
- Mr Rankin asked the Panel to impose the conditions that had been recommended by the Police.
- A mobile support unit had been in use since April 2016 and the premises had been a member of the Business Crime Reduction Partnership since 9th January 2014.
- Clubscan was an important piece of equipment and helped to keep dealers out of the premises.

- Mr Kianifard was stepping down and would be a back seat operator of the premises.

Questions to the Licence Holder

77.9 In response to questions the following was confirmed by the applicants:

- A question was raised about the garden with regard to fire safety. Was there an escape route? Mr Kianifard confirmed that there was a fire escape through double doors to the left of the garden area. The doors led out to the street. There was a metre gap from where the main building ended and the garden started. The area had been checked twice by the council.
- It was pointed out that in some premises champagne bottles were often left behind the bar. Mr Rankin replied that it was not uncommon to share Champagne with a companion.
- The applicant was asked about the type of cocktail glassed he used. Mr Kianifard replied that he had 6 or 7 different type of cocktail glasses. There were two types of martini glasses. Drinks could not be served in any other type of receptacle.
- The applicant was asked if the new DPS was experienced. Mr Kianifard confirmed that the DPS was very experienced. Mr Kianifard stated that he had run Misty's for 11 years and had taken the role very seriously. His life had changed dramatically when he became a father in 2012. He admitted that he should have probably stood down as DPS at that time. Prior to 2012 there had been no problems. Mr Kianifard stressed that the demographics of Hove had changed in recent years. When he first opened there were no problems at all.
- Mr Kianifard was asked if the new DPS had previous experience of the type of problems experienced at Misty's. Mr Kianifard replied that Mr Safar had experience of working in bars in Damascus and Paris.
- It was confirmed that the new DPS had run a fish and chip restaurant opposite Misty's. The shop was able to sell alcohol and closed at 11.30pm.
- Mr Safar confirmed that he had not experienced any problems related to alcohol or drugs at the fish and chip restaurant.
- Mr Kianifard was asked whether he had taken on board the Panel's points with regard to vulnerable women. He replied that he had contacted licensing officers on two or three occasions to ask if a vulnerability course was available. He wanted his staff to be trained.
- The Police were asked if they were happy with the proposed DPS. Ms Irving replied that the Police could only object to a DPS in exceptional circumstances. The police had not had a chance to interview the new DPS but enquiries to date had not given them any reason to object. Mr Savill advised that one of the steps the Panel could take was to remove Mr Kianifard as DPS. He suggested that the Panel might wish to add a condition stating that any new DPS is agreed by the police. Mr Rankin pointed out that the Police could only resist a DPS on grounds that were lawful.
- The Police were asked if they thought that Mr Safar was an individual who could run Misty's. Sgt Morgan replied that Mr Safar was an unknown quantity but stressed that the Police did not have the powers under statute to object to his appointment. It was confirmed that Mr Safar was already DPS of Misty's.

- Mr Rankin confirmed that he accepted responsibility on behalf of Mr Kianifard for what had happened at the premises. He accepted that they were serious incidents.
- Mr Safar was asked what experience he had solving problems in a difficult premises. Mr Safar replied that new systems were in place. Misty's now had security, CCTV cameras and a scanner. Mr Safar confirmed that he had been a DPS for 11 years. He owned the fish and chip shop opposite Misty's and was partner in an off licence in Lancing. Mr Safar had run a night club in Syria and a cocktail bar in France.
- Mr Safar confirmed that there were five Premises licence holders including him. Mr Simmonds confirmed that one more person was being trained.
- Mr Kianifard was asked how much involvement he would have in Misty's. He replied that his role would remain as business owner, not DPS. He would ensure that changes were put in place. A refurbishment would take place when Misty's was closed for 10 days and the name of the premises would probably be changed. Mr Kianifard stated that the incident in February 2016 had been pre-planned and that the individuals concerned had not been drinking more than two drinks. One group of three ordered drinks and went into the garden where two of them sat together. Three more people entered and went straight to the garden and over to the two people who were seated.
- In answer to questions Mr Nick Garrett, Security Operation Manager stated that demographics had changed and management would ensure changes were implemented in the premises. His firm looked after just over 100 premises in Brighton & Hove. The incident on 20th February 2016 was one off and could be dealt with by bolting down tables, having heavy chairs and having SIA door supervisors and CCTV cameras. These measures would help to make the garden safe.
- Mr Mason was asked how he would prevent drugs from entering the premises. Mr Mason stated that it was a matter of judgement. When there were groups, one or two people would be searched. There would be communication with every person entering the premises.
- The Police were asked if they were content with the appointment of the new DPS. Ms Irving replied that the Police would have preferred someone more experienced. Mr Safar had some experience but he did not know the premises. It was difficult to get a DPS with experience for such a small bar. If any of Mr Safar's decisions lead to problems there would be another review.

Summaries

77.10 The Licensing Officer stated that the Panel had heard that the licensing objectives had been undermined. There had been a discussion about the Memorandum of Agreement between the Police and Afshin Kianifard. The Panel needed to decide whether to endorse the agreement or consider taking such steps that were considered appropriate for the promotion of the Licensing Objectives. These were:
Modification of licence conditions – adding, modifying or removing conditions

Exclusion of a licensable activity – this could include limiting hours or activities in all or part of the premises
Removal of a designated premises supervisor
Suspension of the licence for a period not exceeding 3 months
Revocation of the licence
Or do nothing.

77.11 The Licensing Authority should seek to establish the causes of concern and take remedial action. The response should be appropriate and proportionate.

77.12 Mr Savill stated that in determining the application to review the licence and deciding appropriate steps to take, the Panel was dealing with a question of judgement. There was no one right answer to many licensing situations. The decision needed to be evidenced based and needed to look at the causes of the problem. The Police had reached the conclusion that the Memorandum of Agreement was an appropriate solution to the problem. He commended the Memorandum of Agreement to the Panel. In the event of any default, the Police would act firmly and would likely request a review.

77.13 Mr Rankin stated that he wholly accepted that something went wrong and that something needed to be done. The Police had produced the Memorandum of Agreement which he commended as a proper and appropriate solution.

77.14 Before making their decision, the Panel canvassed Mr Rankin and the premises owner with a suggestion that there should be a suspension period of one month as this would have a deterrent message, would provide time for rebranding the premises, might lead to the premises attracting a different clientele, and would give time to carry out the other conditions suggested by the Police. If the premises was closed for 10 days people who used Misty's might not realise there was a new regime.

77.15 The Panel stated that they also wished to see a condition to state that an SIA registered door supervisor would be responsible for supervising the garden area on Friday and Saturday nights.

77.16 Following consultation with his client Mr Rankin stated that he agreed to the condition relating to SIA registered door staff, but could not agree to the closure of the premises for a period of one month as that would end the business. The owner could extend the voluntary closure to 31st March. If the closure was longer than that period, there would be an appeal.

77.17 RESOLVED:

The decision of the Panel was as follows –

The Panel has carefully considered this review application and all the supporting documentation and has listened to all the submissions and arguments made at the hearing. The review has been applied for by Sussex Police on the basis that the licensing objectives of the prevention of crime and disorder and public safety have been seriously undermined due to a series of incidents at the premises including assaults with life changing injuries, public order offences and incidents involving severe intoxication going back to at least January 2015. Drug

swab profiling also revealed high levels of reading for cocaine within parts of the premises on 3 occasions.

The panel was presented with a proposed memorandum of agreement containing conditions relating to door staff, reduction in hours, Clubscan and voluntary suspension as an appropriate and proportionate response to the review. The Panel spent a great deal of time questioning both the police and the licence holder about these proposals. The panel expressed serious concerns at the nature and severity of many of the incidents which had occurred at the premises and was concerned to ensure that the proposals were appropriate and sufficient to resolve the issues at the premises and ensure robust management in the future.

After careful consideration the panel has decided to accept and endorse the memorandum of agreement put forward by the police and licence holder with two amendments which are agreed and accepted by the parties. The first is to add in after the SIA door staff condition for Fridays and Saturdays, at the end of the first paragraph: *One SIA door supervisor shall have responsibility for supervision of the garden area.* The second relates to the period of voluntary closure to read: *The Premises Licence holder has agreed to a voluntary closure of licensable activity at Misty's commencing on Friday 17th March and ending on Friday the 31st March.*

The panel wish to make it clear that these steps constitute a 'yellow' card in line with the adopted enforcement procedure and that any further incidents are likely to result in a further review and likely revocation of the licence.

The meeting concluded at 2.00pm

Signed

Chairman

Dated this

day of