

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

10.00am 9 FEBRUARY 2018

ROOM G90, HOVE TOWN HALL

MINUTES

Present: Councillors O'Quinn, Morris and Hyde

Officers: Rebecca Sidell (Legal Advisor), Sarah Cornell (Licensing Officer) and Cliona May (Democratic Services Officer)

PART ONE

76 TO APPOINT A CHAIR FOR THE MEETING

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

77 WELCOME & INTRODUCTIONS

78 PROCEDURAL BUSINESS

a Declaration of Substitutes

78.1 There were none.

b Declarations of Interest

78.2 There were none.

c Exclusion of the Press and Public

78.3 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).

78.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of Item 79 onwards.

79 NISA LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

79.1 The Panel considered a report of the Executive Director of Neighbourhoods, Communities & Housing in relation to an application for a Variation of a Premises Licence for Nisa, 18 Victoria Terrace, Hove. Present at the hearing were: Hannah Stapleford (Sussex Police), Donna Lynsdale (Licensing Authority), Peter Castleton (Public Health) and Jon Stanley (St Andrews Church).

79.2 The Legal Advisor explained that as the applicant was not present, under the Hearings Regulations the Panel could adjourn the hearing or hear from the parties present and make a decision using this and the paperwork provided. The licensing officer confirmed that the notice of hearing was properly sent out. The Panel agreed to continue with the hearing.

Introduction from the Licensing Officer

79.3 The Licensing Officer introduced and highlighted the following:

- The variation proposed to change the existing layout plan and extend the hours for sale of alcohol and opening hours to 0700 – 0000 hours. The hours were currently 0800 – 2300 hours.
- The premises did not fall within cumulative impact area or the special stress area.
- Four representations were received from Sussex Police, the Licensing Authority, Public Health and a local church with concerns relating to all four licensing objectives.
- The Matrix approach to licensing decisions, found in the statement of licensing policy, included a table with provisions for a terminal hour for all classes of license premises in a particular area, recognising the diverse operations and different risks presented by those premises.
- The premises fell in the ‘Other Areas’ category of the matrix and as such the matrix would allow a licence for off sales until 2300 hours, or earlier if considered a densely residential area. It was important for the Panel to also take in to account the notes that accompany the Matrix, particularly that each application would be given individual consideration on its own merits.

79.4 In response to queries raised by the Panel the following was clarified:

- The floor plan in the agenda was the applied for plan and not the current layout. The alcohol would be displayed at the front of the shop. Sussex Police and the Licensing Authority had not submitted representation in regards to the change of layout.
- A test purchase was conducted and failed after Sussex Police had received intelligence that the shop had sold alcohol to someone under the age of 18. The premises licence conditions were updated as part of a minor variation in July 2017 due to this.
- The applicant had the licence from 2016.

Introduction from the Responsible Authorities

79.5 Ms Stapleford introduced, on behalf of the Sussex Police, and highlighted the following:

- The location of the premises was defined as “Other Area” in the Matrix system which suggested that consideration would be given to the nature and location of the area and

a licence would not be granted later than 2300 hours unless there were exceptional circumstances.

- The premises was in a residential area and there was evidence of antisocial behaviour, street drinking and underage drinking.
- The Central Hove ward was ranked the fourth highest ward in the city for street drinking and antisocial behaviour.
- Sussex Police were not satisfied with the limited information supplied by the applicant and there was not consistency in the application as it mentioned adopting both Challenge 25 and Challenge 21.
- Additional conditions had not been proposed to mitigate the risks from the applied extension of hours.

79.6 In response to queries raised by the Panel Ms Stapleford clarified the following:

- The applicant initially stopped selling high percentage beers and ciders; however, these have started to be sold again.
- There had been an increase in Police Community Support Officers in the area due to the antisocial behaviour.
- Sussex Police had worked closely with the Local Councillors regarding the problems in the area.

79.7 The Licensing Officer introduced, on behalf of the Licensing Authority, and highlighted the following:

- The extended licence would undermine the licensing objectives of prevention of crime and disorder and public nuisance
- The variation was also to amend the plan on the licence and the Licensing Authority had no objection to that part of the application.
- The Licensing Authority together with Trading Standards and the Sussex Police had been operating an off-licence accreditation scheme since 2014 known as 'Sensible on Strength' (SOS). Nisa had previously decided not to join the scheme.
- Complaints had recently been investigated regarding the premises serving alcohol to intoxicated street drinkers but despite this the premises had not offered up in their operating schedule to stop selling beers, lagers and ciders over 6% ABV.
- Granting the application would add to the additional burdens and problems.
- The applicant had not demonstrated that there were exceptional circumstances to justify departing from the Policy.

79.8 In response to Councillor Morris it was explained that the first visit was shortly after the applicant had taken over the business and they discussed the ongoing problems in the area. After the failed test purchase the applicant had training with Sussex Police and the Licensing Authority regarding alcohol sales to underage customers. It was added that following an incident regarding the applicant selling alcohol to someone in a hospital gown there was further discussion about being responsible.

79.9 The Deputy Director of Public Health introduced and highlighted the following:

- The premises was situated just outside of the Cumulative Impact Zone (CIZ) and the Special Stress Area (SSA).

- The Matrix suggested that applications for “Other Areas” would not be granted after 2300 hours unless the applicant had demonstrated exceptional circumstances.
- The applicant had decided to not participate in the SOS scheme.
- The statistics for the Central Hove ward were outlined and indicated that there were existing problems in the area.
- Granting the licence would add to the existing problems.

79.10 In response to the Panel the Deputy Director of Public Health clarified the following:

- Central Hove was ranked fourth highest for A&E admittances that were alcohol related.
- When a homeless person was admitted to hospital it would state where they came from and were picked up by the ambulance as they did not have a fixed address.
- There were particular hot spots within the ward that were prone to street drinking and antisocial behaviour.

Introduction from the Other Parties

79.11 Mr Stanley, St Andrews Church representative, introduced and highlighted the following:

- The majority of local premises in the area were taking action to help street drinkers and the SOS scheme had been successful in the area. There was concern that Nisa were not preventing the problems and did not join the scheme.
- Street drinkers were buying alcohol from the premises, which could be tracked by the serial numbers on the cans.
- Street drinkers were currently congregating outside the premises.
- There were high percentage drinks being sold at the premises; for example K Cider, which was 9% ABV.
- The alcohol bought at the premises was often consumed in the church gardens and there had been incidents where the street drinkers had fallen and been unconscious and were at risk of hyperthermia due to the lack of clothing.
- Sussex Police and the Licensing Authority had attended the premises on multiple occasions following complaints; however, the premises were not changing their actions.

79.12 In response to Councillor O’Quinn the Legal Advisor noted that it would be disproportionate for the Panel to add conditions to the licence if they did not agree the variation. If the variation was agreed then the Panel could agree to restrict the sales of single cans. Mr Stanley added that the promotional offers should be restricted and would be more effective than the restriction of single can sales.

Summaries

79.13 The Licensing Officer summarised and highlighted the following:

- The Licensing Guidance stated that:
“In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:
 - *the steps that are necessary to promote the licensing objectives;*
 - *the representations (including supporting information) presented by all the parties;*

- *the Guidance;*
- *its own statement of licensing policy”*
- Each application would be given individual consideration on its own merits.
- If the Panel decided to grant the application then any conditions added to the licence to meet the Licensing Objectives should be clear, precise and enforceable.
- The licensing authority may refuse the application on the grounds that this is appropriate for the promotion of the licensing objectives or grant the application in part if they feel that is the appropriate action to take.

79.14 Ms Stapleford summarised, on behalf of the Sussex Police, and highlighted the following:

- The applicant did not consult with Sussex Police prior to submitting the application.
- The applicant had not proposed additional conditions to mitigate the risks from the applied extension of hours.
- The applicant had not demonstrated that there were exceptional circumstances to justify departing from the Policy.
- The application was inconsistent.
- There were currently existing problems in the area and the extension in hours could contribute to these.

79.15 The Licencing Officer summarised and explained that granting the variation would add to the burden and problems in the area and the applicant had not demonstrated that there were exceptional circumstances to justify departing from the Policy.

79.16 The Deputy Director of Public Health summarised and explained that granting the variation would increase the amount of alcohol in the area.

79.17 Mr Stanley summarised and noted that he was disappointed the premises was not actively helping in the community.

79.18 At 1047 hours, the Chair informed the Panel that the Councillors would retire to make a decision on all the submissions made at the hearing, the representations and all the supporting documents provided.

Decision

79.19 The decision was sent to all parties on 12 February 2018. The decision was as followed;

“The Panel has considered all the papers and relevant representations and listened to all the submissions made at the hearing. The panel noted and were disappointed that the applicant failed to attend the hearing.

This is an application for a variation of the premises licence to extend the hours for sale of alcohol off the premises to from 7am to midnight and to amend the plan attached to the licence.

Representations against the application have been made by the police, licensing authority, Public Health and a local church.

Those making representations believe that this variation to extend sale of alcohol hours will add to problems already experienced in the area, including anti-social behaviour, and in particular street drinking, and will undermine the licensing objectives. We heard evidence from the licensing authority and the church representative that these premises are directly linked to the sale of alcohol to street drinkers. Visits to the premises have been made by police and licensing to see if they would join the council's sensible on strength scheme but so far the premises have failed to engage with the scheme.

The panel has considered the statement of licensing policy in relation to this application and the notes to the matrix and the public health framework for alcohol licensing report.

There was no pre application consultation with responsible authorities. No special measures or conditions are proposed which would mitigate the risk presented by the application. In fact the conditions offered are actually weaker than those already on the licence especially regarding CCTV and there is confusion over challenge 25 or challenge 21. The panel can find no exceptional circumstances in relation to this application.

The panel consider having regard to the evidence presented, and the representations that granting this variation in respect of extended hours would add to the burdens already experienced in the area and would undermine the licensing objectives especially those of prevention of crime and disorder, and prevention of public nuisance. The panel therefore refuse this part of the application. We do grant the variation in relation to the amended shop floor plan.”

Item of Business

80 LICENSING AUTHORITY CONSIDERATION OF SUSPENSION OR REVOCATION OF A PERSONAL LICENCE - S132A (3) (A) AND (B) LICENSING ACT 2003

- 80.1 The Legal Advisor explained that the briefing note was considered as an item of business for the sub-committee and was a new procedure brought in by The Policing and Crime Act 2017. The Licensing Authority could now revoke or suspend a Personal Licence upon a Personal Licence Holder being convicted of a Relevant Offence. The Personal Licence Holder had the opportunity to make representations and Sussex Police could make representations if the Licensing Authority was not minded to suspend or revoke.
- 80.2 The Licensing Officer explained that the Mr McGrath, Personal Licence Holder, was written to on 12 December 2017, enclosed a pre-paid envelope for representation to be received, and had 28 days to respond. No representations had been received. It was explained that the Personal Licence Holder was no longer the Designated Premises Supervisor for the Pussycat Club and the Bugle Public House after a variation was sought. The power to revoke or suspend Personal Licence could previously only been exercised by the Courts. The Licensing Authority had written to the court and had not received a response regarding his Personal Licence.
- 80.3 **RESOLVED** – That the Panel agreed to revoke Mr Kenneth McGrath's Personal Licence.

80.4 The decision was sent to all parties on 12 February 2018. The decision was as followed;

“The Panel has read the briefing note and has had regard to the Licensing Act 2003 and S182 guidance. The licence holder has a recent unspent conviction for a relevant offence, namely S47 of the Sexual Offences Act 2003, (paying for sexual services of a child). He has received a prison sentence of 3 years.

The licence holder was written to informing him that the licensing authority was considering suspending or revoking his personal licence and invited to make representations. No representations were received.

The sale of alcohol carries considerable responsibility because of its potential impact on the wider community. Sales must be authorised by a personal licence holder.

In light of the seriousness of the offence, the panel consider it is appropriate to revoke this personal licence for the promotion of the crime prevention objective, the protection of children from harm and public safety licensing objectives.”

The meeting concluded at 11.23am

Signed

Chairman

Dated this day of