

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

10.00am 10 DECEMBER 2018

COMMITTEE ROOM G70, HOVE TOWN HALL

MINUTES

Present: Councillors: Hyde (Chair), Knight and Marsh

Officers: Sarah Cornell (Licensing Officer) Donna Lynsdale (Licensing Authority Officer), Rebecca Sidell (Legal Advisor) and Mark Thorogood (Police Licensing Officer) Kat Hoare (Democratic Services Officer)

PART ONE

63 TO APPOINT A CHAIR FOR THE MEETING

63.1 Councillor Hyde was appointed Chair for the meeting.

64 PROCEDURAL BUSINESS

64a Declaration of Substitutes

64.1 There were none.

64b Declarations of Interest

64.2 There were none.

64c Exclusion of the Press and Public

In accordance with Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2003, the Licensing Panel considered whether the public interest in excluding the public and press from all or any part of the hearing outweighed the public interest of the hearing taking place in public.

64.3 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of Item 65.

65 PIZZA PLUS LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

65.1 The Chair introduced the Panel and stated that she had decided to delay the start of the Panel by 15 minutes in order to wait to see if the Applicant would attend. The Chair checked whether the Applicant had been contacted in advance and the Licensing Officer confirmed that she had spoken with the Applicant by phone on

Thursday 29th November 2018 and that she had reminded them of the Panel date and location and encouraged the Applicant to attend.

- 65.2 After waiting for 15 minutes, the Applicant did not appear and thus the Legal Advisor confirmed that the Panel could still go ahead in the absence of the Applicant, citing Regulation 20 of the Hearings Regulations (2005). The Panel agreed to proceed in his absence.
- 65.3 The Panel considered a report of the Director of Neighbourhoods, Communities and Housing to determine an application for a Variation of a Premises Licence under the Licensing Act 2003 for Pizza Plus.

Introduction from Licensing Officer

- 65.4 The Licensing Officer stated the following:

“This hearing has been arranged for an application for a variation to the premises licence issued for Pizza Plus, 80 Beaconsfield Road, Brighton.

The variation proposes to add the sale of alcohol for off sales by way of deliveries only. They have applied for the same terminal hours as their existing premises licence which they have for LNR, the hours are: Monday – Saturday until 3am and Sunday until 2am (with a start time of 4pm).

The premises does not fall within the cumulative impact area or the special stress area.

Three representations were received from Sussex Police, the Licensing Authority and Public Health relating to all four licensing objectives. Public Health have sent their apologies. Representations are attached at Appendix C, from page 23 of today's agenda.

As the panel are aware, the adoption of the Matrix approach to licensing decisions found in the statement of licensing policy and this agenda includes 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. This can be found on page 8 of the agenda today.

This premises does not fall within our cumulative impact area or the special stress area. It falls in the 'Other Areas' category of the matrix and as such the matrix would allow a licence for off sales until 11pm (or earlier if considered a densely residential area) but it is important for the committee to also take in to account the notes that accompany the Matrix, particularly that each application will be given individual consideration on its own merits.”

Questions to the Licensing Officer

- 65.4 The Police Licensing Officer asked where the responsibility lay, legally when a driver was employed through a delivery service. Would it be the Licence Holder or the driver who was responsible for upholding the Licence?

- 65.5 The Licensing Officer replied that although the issue of delivery of alcohol may appear to be a grey area, she confirmed that it was clearly the Licence Holder's personal responsibility and that any conditions attached to the License should be adhered to, which included the delivery of alcohol. She confirmed that License holders would need to ensure that drivers were properly trained to uphold this.
- 65.6 The Legal Advisor agreed with this answer and confirmed that, ultimately, the licence holder had the responsibility for the Licence and that this was especially important regarding the prevention of delivering alcohol to children.
- 65.7 Councillor Marsh asked whether the Licensing Officer had dealt with any similar cases in the past, where alcohol was being delivered by drivers as part of a delivery service. The Licensing Officer replied that she could not recall another recent similar application and that the license was for late night refreshments where the Applicant wanted to be able to sell alcohol. The Police Licensing Officer confirmed that the most recent example in his experience, was Deliveroo – the delivery franchise company, based in Hove, who hold their own separate delivery licence.
- 65.8 The Chair asked whether the responsibility for selling alcohol to children or people who were already intoxicated could still be enforced in the same way when a delivery driver was being employed by the License holder ? The Licensing Officer confirmed that it was the Licence Holder's sole responsibility even if they employed drivers and that it was an offence to sell alcohol to those already intoxicated. Councillor Hyde stated that she was concerned that when alcohol was being delivered after midnight, it would be likely that there would be potential customers who were already intoxicated and that delivery drivers might not be aware that it was an offence to sell alcohol to these customers.

Representations from Responsible Authorities

Police Licensing Officer

- 65.9 The Police Licensing Officer Mark Thorogood addressed the panel and stated the following:

“As mentioned, this is an application to vary the current late light refreshment licence held at Pizza Plus, 80 Beaconsfield Road, Brighton to allow the premises to sell alcohol and supply this by way of delivery – so off sales. The times requested are 16:00 – 03:00 Monday through Saturday and 16:00 – 02:00 on a Sunday.

The location of the premises is just outside the Special Stress Area as set out within the Brighton and Hove Statement of Licensing Policy however, when considering this application, following an email communication with the applicant, it was confirmed that they provide delivery within 3 miles of the premises. This would mean deliveries being conducted not only within the Special Stress Area (SSA) but also the Cumulative Impact Area (CIA). Sussex Police felt this needed to be taken in to consideration when reviewing this application. As shown on page 8, 3.3.2, the matrix approach does not give support for off-licences within the SSA or CIA, of which we feel this application falls under due to alcohol being sold to be consumed only off the premises. Within the

other areas it suggests an end time of 23:00 of which could be pulled back further if within a densely residential area, of which this premises is.

On reviewing the applicant's website on 22nd October 2018, the advertised operating hours exceeded their current Late Night Refreshment Licence which constitutes a breach. The current licence permits staying open until 03:00 Monday through to Saturday and 02:00 on Sunday. The times advertised on the premises own website advertised 04:00 Sunday through to Thursday and 05:00 Friday and Saturday. Due to this we are concerned how the premises is currently being run and the management's ability to operate with such a licence responsibly and have the ability, and wish, to effectively promote the licensing objectives. A copy of the website page can be viewed on page 29 of your pack. The website has since been updated though still does not set our mind at rest - especially when on Just-Eat.co.uk it shows opening hours of 05:00 seven days a week.

Other concerns regarding this application were listed as follows:

- This application is for delivery only and though this is a take away food outlet, no conditions have been offered to confirm that the sale of alcohol will be ancillary to a food order. Also how much food vs alcohol. Could bulk alcohol be ordered with very limited food to gain a delivery of alcohol? It would be very difficult to condition a minimum food order as 1 burger could be ordered with a large amount of alcohol.
- No condition has been offered to confirm that deliveries of alcohol will only be to people's private homes. We have concerns over alcohol being delivered to outdoor spaces, especially parks due to the high probability of children being around and possibly being linked to proxy sales and underage drinking.
- The hours of operation extends the availability of alcohol into the early hours and during a time frame when there is a high probability of persons having already consumed alcohol.
- With this being a delivery service, it makes the ability to purchase and consume alcohol easier without the need to leave home.
- Being a lone delivery driver we have concerns over public safety and crime and disorder should the driver need to refuse a sale due to customers' intoxication levels or being underage. Not having the back up of security or colleagues, a refusal could put them at risk of abuse and possible violence.
- Due to my last comment, the risk to the delivery person could in turn force them to provide the alcohol to underage or intoxicated persons at risk of fear or repercussions if they don't.
- The applicant has made no mention of the Brighton and Hove Statement of Licensing Policy or attempted to pre consult with Sussex police priory to submission of the application. Though this is not compulsory, it would be best practice especially when applying for something that goes against the policy matrix.

The premises is located within Preston Park ward and though under the Public Health Framework, this area is not a cause for concern, the close proximity to areas such as The Level, Lewes Road, London Road and the general City Centre does. All of these

areas could be delivered to and have issues which relate to crime and disorder and public safety which are generally linked to alcohol.

Due to the points raised, Sussex Police feel uneasy about the granting of an alcohol licence for this premises and because of this, we have submitted our representation against this application. We felt strongly that it should be brought before a licensing committee for full consideration and although we are unable to support such a licence, to assist in mitigating risk should one be granted, I can provide a list of possible conditions to be considered by the panel.”

- 65.10 The Police Licensing Officer then showed the Panel a printed sheet of the recent conditions which was dated 2nd December 2018.

Questions to the Police Licensing Officer

- 65.11 The Chair stated that she shared all of the Police Licensing Officer’s concerns and that she had no further questions on this.
- 65.12 Councillor Marsh asked if the Police Licensing Officer’s fears would be allayed if the hours requested for the variation were rolled back to the matrix hours ? The Police Licensing Officer stated that he would have the same concerns even if the hours were within the matrix.
- 65.13 Councillor Knight stated that she was concerned that alcohol may be delivered to a park or public area and that children or other vulnerable people may therefore have unlawful access to alcohol.

Representation from the Licensing Authority Officer

- 65.14 The Licensing Authority Officer addressed the Panel and stated the following:

“You have seen my representation against the application for a variation to the existing licence to add the sale of alcohol as off sales:

Alcohol Hours (off consumption) – Monday-Saturday – 4pm–3am and Sunday – 4pm–2am.

The premises already has a licence for Late Night Refreshment only Monday-Saturday 11pm–3am and Sunday 11pm-2am.

I make my representation on the grounds that the extended licence will undermine the licensing objectives of prevention of crime and disorder, public nuisance and protection of children from harm. It is also contrary to the Statement of Licensing Policy.

On 6 November 2018, I sent the premises a warning letter for alleged unauthorised licensable activities, as they were advertising on their website and Just Eat website Sunday-Thursday until 4am and Friday-Saturday until 5am.

Although the premises did not respond to my letter, they did amend their website, but Just Eat are still advertising the opening hours until 5am seven days a week.

The decision-making Matrix on page 17 of the Council's Statement of Licensing Policy states that outside of the CIZ, SSA & Marina Off licences may be granted up until 11pm (or earlier if a densely residential area). The aim is to reduce availability of alcohol to address late-night street drinking, binge drinking and post-loading. There is an obvious disconnect in where alcohol is sold for off consumption and any subsequent nuisance or crime and disorder.

In addition, this premises falls within the electoral area of Preston Park. The premises is also on the border of the St Peters and North Laines electoral ward. According to our Public Health Framework for Assessing Alcohol Licensing, St Peters and North Laines is ranked 1st for 'Police recorded alcohol related incidents' and 2nd for 'All violence against the person', 'All injury violence', 'Non-injury assault' and 'Alcohol suspected ambulance call outs'.

The applicant has mentioned in their application that alcohol would be for deliveries and they will check ID to ensure the customer is over 18 years. As the applicant will not carry out the deliveries themselves, I cannot see how they can ensure this will be carried out. Also, deliveries may be to premises within the CIZ and SSA areas, which already have problems with crime and disorder and public nuisance.

It is my opinion, that granting this application would add to the additional burdens and problems and I do not believe that the applicant has demonstrated that there are exceptional circumstances to justify departing from the Policy. I therefore request this application is refused in line with our Statement of Licensing Policy and the Matrix approach."

Questions to the Licensing Authority Officer

- 65.15 Councillor Marsh questioned why the Applicant did not respond to the Licence Authority's warning letter and asked whether the Applicant was already in breach of their current Licence? The Licensing Authority Officer stated that they were in breach of their Licence.
- 65.16 The Chair asked if the Licensing Authority would usually expect to receive a response from an Applicant when they had been sent a warning letter regarding a breach of the licence ? The Licensing Authority Officer replied that usually they would have received a response from the applicant, but not always. She gave an example of another premises which had been sent a warning letter in the previous week and that they had already replied. She confirmed that a few months ago, a licensing inspection had been carried out at the applicant's premises, Pizza Plus and Officers had explained to the applicant that they had keep within their licensing hours and the applicant had said that they understood this.
- 65.17 The Chair stated that although the applicant had been issued with a warning letter, they had not amended the advertised hours on the Just Eat website, which was not responsible. The Licensing Authority Officer added that the Applicant was applying for a licence until 3 am, but was currently advertising licensing hours on the Just East website until 5 am. She confirmed that the applicant's website and Just Eat were two separate websites.

65.18 The Chair stated that usually the Panel would question the Applicant on these issues, and that it was regrettable that the Panel were unable to do this, since the Applicant was not present.

Summaries

65.19 The Licensing Officer summarised and stated the following:

“This is an application for a new premises licence for a variation to the premises licence issued for Pizza Plus, 80 Beaconsfield Road, Brighton. You have heard from all the parties present.

Licensing Guidance (9.37) states 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 appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- this Guidance;
- its own statement of licensing policy

It is important to note that each application will be given individual consideration on its own merits.

If the Panel decide to grant the application then any conditions added to the licence to meet the Licensing Objectives should be clear, precise and enforceable.

Alternatively, the licensing authority may refuse the application on the grounds that this is appropriate for the promotion of the licensing objectives and they must give their reasons for doing so.”

65.20 The Officers from the two Responsible Authorities were asked if they wished to sum up, but both the Police Licensing Officer and Licensing Authority Officer confirmed that they did not have any summary. The Police Licensing Officer handed over the list of suggested Conditions, which had been shown the Panel earlier.

65.21 The Legal Advisor confirmed that they had no further questions or information to add and were clear on the situation.

Decision:

65.22 **RESOLVED** – The Panel’s decision was as follows:

“The first decision for the panel was whether to proceed in the absence of the applicant. We heard from the Licensing Officer that all relevant notification had been sent out and that there had been recent telephone contact with the applicant confirming the time and place of the hearing. Being mindful of the difficulties in arranging meetings of the Licensing Panel and noting that all other parties were

present, the panel decided that it was reasonable to proceed in the applicant's absence.

The Panel has read all the papers including the report and relevant representations and listened carefully to the submissions made at the hearing.

The application is for a variation of the licence to include alcohol off sales in the form of a delivery service between the hours of 16:00 to 03:00 Monday to Saturday and 16:00 to 02:00 on Sundays. Relevant representations were received from the Police, the Licensing Authority and Public Health.

Those making representations had concerns about the hours proposed which are contrary to the decision making Matrix set out in our statement of licensing policy for 'other areas'. There were also concerns about the close proximity within the 3 mile delivery radius of challenging areas namely the Special Stress Area (SSA) and the cumulative impact zone (CIZ), the limited ability of the licence holder to ensure compliance of conditions when third party delivery drivers from, for example, Deliveroo and Just Eat are used, and concern over delivery of alcohol to parks and open spaces to vulnerable persons including children. We also heard evidence from both the Police and the Council's Licensing Officer of apparent breaches of the current licensing hours in that on its own website and that of Just Eat, the premises was advertising hours in excess of those on their licence. A warning letter was sent to the applicant and their website was changed, however it was noted by the police and licensing authority that the hours on the Just Eat website for Pizza Plus at the date of the hearing were still being advertised as 05:00 (a copy was provided to the panel).

The panel and the responsible authorities felt it was unfortunate that the applicant had not attended the hearing as they were thus unable to question him about these issues and concerns.

The panel shares the concerns of the responsible authorities in relation to this application. We have concerns about the operation of a delivery service in circumstances where the licence holder would be responsible for promoting the licensing objectives and ensuring that for example appropriate ID checks would be made in a situation in which he would have no effective control over a third party delivery driver. There is a risk of delivery being made to children or those who, due to the extended hours of delivery, are already intoxicated and alcohol could be delivered to such vulnerable groups in any location including open spaces. The delivery radius includes areas of concern such as the SSA and CIZ potentially increasing the availability of alcohol in those areas.

Furthermore, the applicant has continued to advertise hours in excess of his licence despite a warning letter and the panel therefore do not have confidence in his ability to promote the licensing objectives if this application was granted or in his ability to adhere to conditions appropriate to mitigate the risk of such an operation. The application is thus refused."

The meeting concluded at 10.40am

Signed

Chair

Dated this

day of