

BRIGHTON & HOVE CITY COUNCIL

LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

10.00am 1 FEBRUARY 2019

ROOM G90, HOVE TOWN HALL - ROOM G90, HOVE TOWN HALL

MINUTES

Present: Councillors: O'Quinn (Chair), Hyde and Page

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

72 PROCEDURAL BUSINESS

72a Declaration of Substitutes

72.1 There were none.

72b Declarations of Interest

72.2 There were none.

72c 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.

72.3 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of Item 74.

73 TO APPOINT A CHAIR FOR THE MEETING

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

74 WERKS CENTRAL LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

74.1 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 Werks Central.

Introduction from Licensing Officer

74.2 The Licensing Officer Sarah Cornell stated the following:

“This is an application for a new premises licence for Werks Central, 15 - 17 Middle Street, Brighton. The application proposes the Sale of Alcohol for consumption on the premises. Every day 11am-11pm with films, indoor sporting events and live music (see page of 6 the agenda for times). Although live music is now deregulated between the hours of 8am and 11pm where it is played in premises who operate an on sales licence or a workplace.

The licensing team received two representations – one from Sussex Police and the second from the Licensing Authority. Relevant concerns raised in the representations were in relation to the licensing objectives the Prevention of Crime and Disorder, Public Safety and the Prevention of Public Nuisance. Concerns were also raised in relation to the premises location within the Cumulative Impact Area.

The representations can be found from page 25 of the agenda. The Police representation includes some proposed conditions that have been discussed with the applicant and the operating schedule can be found on page 21 of the papers.

As mentioned, this premises is situated in the city’s Cumulative Impact Area. The Special Policy for Cumulative Impact states that applications for new licences will be refused following relevant representations. The applicant can rebut this presumption of refusal if they can show that their application will have no negative cumulative impact on licensing objectives.

The Council’s Statement of Licensing Policy goes on to say that this special policy is not absolute. Upon receipt of a relevant representation, the licensing authority will always consider the circumstances of each case and whether there are exceptional circumstances to justify departing from its special policy. If an application is unlikely to add to the Cumulative Impact of the Area, it may be granted. The onus is on the applicant to demonstrate exceptional circumstances and satisfy the Panel that they will not impact negatively on the CIZ.

The impact can be expected to be different for premises with different styles and characteristics. For example, while a large nightclub or high capacity public house might add to problems of cumulative impact, a small restaurant, theatre or live music venue (where alcohol is not the primary activity) may be considered exceptional circumstances.

The Panel will also be aware of the Matrix approach to licensing decisions found within the SoLP and Page 11 of the Agenda. This includes a table with provisions for a terminal hour for licensed activities for all classes of license premises in a particular area, recognising the diverse operations and different risks presented by those premises although it is up to the panel to look at this application on its own merits.”

Questions to the Licensing Officer

- 74.3 The Chair asked the Licensing Officer if there had been a previous policy in place that had been surrendered in 2016. The Licensing Officer replied that the previous policy had been for all licensed activities from 9am – midnight and it stated that it was not an alcohol-centred venue. The Chair then asked about the classification of the previous and the Licensing Officer replied that it had remained the same.
- 74.4 The Applicant, Ian Elwich – Director of Werks Group Ltd replied that the building had previously housed The Media Centre and Werks Group took it over in 2014 as a gallery for private views. He confirmed that the building contained an arts café and catered to a wide age range and that the usage was similar to the previous occupiers.
- 74.5 The Chair then asked the Licensing Officer what the capacity of the building was and the Licensing Officer replied that this was unknown since it was not stated on the application form. Councillor Page then asked whether the application had been submitted before the Licensing change in opening hours for cafes and the Licensing Officer confirmed that it had been submitted before this.

Representations from Responsible Authorities**Police Licensing Officer**

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

“As mentioned, this is a new application for on-premises sale of alcohol for an events space within an existing café at 15-17 Middle Street, Brighton – a location that falls within the Cumulative Impact Area as set out within the Brighton & Hove City Council Statement of Licensing Policy. The café area is set on the ground floor of a co-working office space building, however it worth noting that the café will not be selling alcohol outside of pre-booked events of which conditions have been offered to ensure this is adhered to should a licence be granted.

The applicant seeks a licence to allow the sale of alcohol between the hours of 11:00 and 23:00 7 days a week. This is in addition to other licensable activities as mentioned by Sarah Cornell in her application presentation.

The applicant has been very open and willing to consult with police during the consultation period and has agreed to a number of conditions should a licence be granted. A copy of these conditions is included within our representation and can be seen from page 30.

In terms of the location, this is the main concern for Sussex Police and the reason behind our representation. Middle Street and the surrounding area is home to a

number of bars, restaurants and off licenses. It also falls within the Operation Marble area – the operation to police the night time economy.

Incidents within Middle Street and the surrounding areas often have an alcohol element attached to it and is evidenced within the Public Health Framework report 5th Edition, Jan 2019. This premises falls within the Regency ward, which is ranked 2nd highest for police recorded alcohol related incidents.

Although it is unlikely the proposed premises itself will contribute directly during the times of operation, it's the pre loading effect of alcohol and how the increased footfall in the area could possibly impact crime and disorder in the area.

As mentioned, Sussex Police have agreed a number of conditions with the applicant that go some way to promoting the licensing objectives. However, we are raising a representation because we believe the application should be considered by the committee, in light of the unique style of the premises in that it being an event space and the location within the Cumulative Impact Area and the crime and disorder associated with that.”

Questions to the Police Licensing Officer

- 74.7 The Chair asked the Police Licensing Officer about Middle Street and whether it was problematic area for the Police. The Police Licensing Officer replied that it was not situated in the centre of the night economy, but that the whole area had a high influx of people and required police intervention on most weekends. He also stated that the area was not well lit and since it was more of a back street area, people could become vulnerable and become victims of crime. The Chair also asked about the public house The Hop Poles situated next door, which is surrounded by residential properties and whether the Werks garden space would limit the number of people permitted outside. The Police Licensing Officer replied that in a meeting with the Applicant, it had been agreed that there would be no music allowed and that it would be closed for drinking alcohol at 10 pm and then continuing to stay open for a further hour for smokers only until 11pm and that there would be a limit of a maximum of 8 people permitted in this area.
- 74.8 Councillor Hyde asked for clarification on the fact that the day-to-day running of the venue did not require any sale of alcohol, however the application requested serving alcohol until 11pm. The Police Licensing Officer replied that he understood that alcohol was required as a condition for events only, since alcohol would be permitted for people on a guest list for specified events. He added that the café would not be offering alcohol for its usual day to day operation. Councillor Hyde queried the Condition 6 on page 3 which stated that “events would not be permitted” yet in paragraph 9b weddings were referred to – which were also surely types of events? The Police Licensing Officer stated that these would be cultural-led events only and not include parties. Councillor Hyde then queried whether the venue should have a café bar licence category instead and the Police Licensing Officer replied that the licence did need to have the correct conditions attached so that it did not turn into a party venue. Councillor Hyde then asked whether Point 2 of the Conditions would have a negative impact on the Cumulative Impact Zone (CIZ). The Police Licensing Officer

replied that he saw the venue as a non-alcohol-led arts venue where all the music events were seated. In reply to the Chair's query of why this venue was not categorised as an alcohol-led venue, he confirmed that it did require a bar, since alcohol was critical to the business, but that the categorisation needed to be clarified and confirmed in this hearing.

- 74.9 Councillor Hyde stated that since the meeting room could be extended into a bigger area by using the glass folding doors, a greater number of people could be consuming alcohol in this extended space. The Police Licensing Officer confirmed that, having visited the premises, a larger area could be made available, however he added that meeting room space was not that big - it was smaller than the current Panel meeting room G90 and that the café space was separate. Councillor Hyde then clarified that there were a total of three meeting rooms which collectively made a large potential café bar area. The Police Licensing Officer replied that he did not feel that the floor area space was an issue for concern for this application. The Chair stated that the synagogue located on the opposite side of the road appeared to have a smaller area and the Police Licensing Officer stated that he could not verify this, since he had not visited the synagogue venue.
- 74.10 Councillor Page asked whether the Police envisaged that the premises could add to disorder problems in Middle Street, although the footfall may be increased, and the Police Licensing Officer replied that he did not envisage an increase in police attendance, but was concerned about the pre-loading of alcohol for audiences in the venue that could lead to possible disturbances in other areas later in the evening. The Applicant stated that the issue was not inside the space but the possible impact outside the area and the Chair confirmed this, since it was situated in the CIZ area.
- 74.11 Councillor Page queried the fact that there was no red line outlining the licensed area within the venue and the Licensing Officer replied that there was nothing in the guidance on this, so a red line could be added to the plan in the application.

Representation from the Licensing Authority Officer

- 74.12 The Licensing Authority Officer Donna Lynsdale addressed the Panel and stated the following:

“This representation is made as the Licensing Team have concerns that the application could have a negative impact on the licensing objectives of prevention of crime and disorder and public nuisance.

I also refer to the Special Policy on Cumulative Impact (SPCI) contained within the Council's Statement of Licensing Policy (SoLP).

This premises falls within the Licensing Authority's Cumulative Impact Area (CIZ), which was adopted to give greater power to control the number of licensed premises within the city's centre. The SoLP was introduced because the Licensing Authority determined that the concentration of licensed premises and the subsequent numbers of people drawn into the city centre is causing exceptional problems of crime and disorder and public nuisance. The effect of the SoLP is that applications for new

premises licences should normally be refused following relevant representations. The applicant can rebut this presumption of refusal if they can show that their application will have no negative cumulative impact on licensing objectives, including prevention of crime and disorder and public nuisance.

Where specific policies apply in the area (for example, Cumulative Impact Zone (CIZ)), applicants are also expected to demonstrate an understanding of how the policy impacts on their application, any measures they will take to mitigate the impact, and why they consider the application should be an exception to the policy.

The Licensing Authority will always consider the circumstances of each case and whether there are exceptional circumstances to justify departing from its SoLP.

The Licensing Team make this representation to uphold our Statement of Licensing Policy. The Policy is predicated on too much alcohol being available and, as previously stated, applications for new premises licences will be refused unless the applicant can demonstrate exceptional circumstances. The onus is on the applicant to demonstrate this and we would invite them to explain their exceptional circumstance to the Panel, so that the Panel can decide whether they are satisfied that, this application will not impact negatively on the CIZ.”

Questions to the Licensing Authority Officer

- 74.13 Councillor Hyde asked whether the Applicant had addressed the issue of extra hours stated in Section 18 of the Licensing objectives and the Licensing Authority Officer replied that she felt it was unclear from the application within the matrix and CIZ, since it did not appear to fit into any category and she felt that the Applicant needed to clarify this. Councillor Hyde then asked if the Café should have a licence until 10pm rather than the time of 11pm stated in the application. The Licensing Authority Officer stated that the premises was not a café bar. The Chair stated that this fact was confusing and asked if the Licensing Authority Officer had made contact with the applicant and visited the premises and she replied that she had not visited the premises and that her report focussed on policy, and that it was more relevant for the Applicant to have a discussion with the Police about this application. Councillor Page asked if they knew if the Applicant planned to provide food in the evening at the premises and the Licensing Authority Officer replied that she did not know this and that this depended on what category the premises came under. The Chair agreed that this premises did not fit into the categories clearly and that the Panel would ask the Applicant about this.

Representation from the Applicant

- 74.14 The Applicant Mr Ian Elwick circulated a paper to all parties and stated that the venue wished to provide a calming influence to the surrounding area and that it was different to other local venues. He confirmed that the venue was already established as a café and that now they needed a licence to run events – but that these would be less frequent than the public house next door to the venue, which were happening every night. He stated that it was a mixed-use venue which targeted a broad 25 – 75 year old age group market. He confirmed that since it was a co-working environment, it was a more sober demographic since most young people consumed less alcohol than the public as a whole. He also stated that it had a good record as a daytime venue and

that it was used by community groups and Brighton Fringe as a ticket-only venue and that they had not applied for temporary event notices (TEN)s.

- 74.15 He then compared the venue to the Hippodrome which he stated had a similar demographic and which had run for 10 years without incident. He also confirmed that the venue promoted a culture of equality and targeted a very wide 25 – 74 year old age range and that due to its economic and community focus, it had received funding.
- 74.16 He confirmed that smoking was not allowed anywhere within the building – only in the garden area and that there was no audio speaker system in the venue, but that they had invested in 10 cctv cameras, although the Police recommendation was only for a total of 8 cameras. He also stated that all staff were fully trained, which included: DPS and GDPR training and confirmed that no children were allowed in the building after 7pm and that there was no vertical drinking or plastic cups used and that the venue had liaised with all the relevant authorities on this. To sum up, the Applicant concluded that The Werks was a cultural venue where alcohol was not the primary activity and thus he felt that they would actually reduce the impact of anti-social behaviour in the local area.

Questions to the Applicant

- 74.17 The Chair asked the Applicant whether he had any evidence for his claim of the venue's calming effect? The Applicant replied that this was anecdotal at present, but that he could collect this, if given more time. He also stated that, since the premises had been an arts venue for some time, it had a history without any incidents of trouble. He confirmed that the venue was not big and had a small venue area that could take up to 50 people. He explained that this was a seated area with two meeting rooms with fold-back doors. Mel Bamford, Community Manager at The Werks then explained that the café area did not have to be used when there was a performance in the acoustic area and that during evening performances the public could not just walk in off the street. She confirmed that they were applying for a full licence solely for cultural events.
- 74.18 The Chair asked why the venue did not just apply for fifteen TEN event notices to cover these events. The Applicant replied that during May, Brighton Fringe would use it for one month and at other times there would be possibly just one event per week. Councillor Page then confirmed that he understood that more than the maximum of ten TEN notices might be required. The Chair then asked how many people would be allowed in the garden during an event and Ms Bamford replied that the garden was only small – roughly three times the size of Room G90 the room of this hearing, however they confirmed that it was bigger than the garden belonging to The Hop Poles. The Chair also asked what the purpose of the garden was during an event and the Applicant replied that it was not being used in the Winter and in Summer there may be some art installations in the garden and thus people may want to take alcohol in plastic cups into the garden area and that ideally they would want the garden to be part of the licensed area. The Legal Advisor queried whether this licensing area was shown on the plan and Sarah Cornell – Licensing Officer confirmed that since there was no bar in the garden, this was not required to be shown on the plan. The Chair said that she was concerned about noise levels in the garden and how these would affect local residents, as the Hop Poles pub had been a problem in the area due to

noise . The Applicant replied that two sides of the garden were faced on one side by a four storey block of flats and the other side was the back of LazerZone. Councillor Hyde asked whether, if the licence was granted, the venue would be prepared to limit the number of people in the garden at any one time, since there were currently no conditions stipulated on this. Ms Bamford replied that the venue had a good relationship with residents in the neighbouring flats and that the venue would only permit people to be in the garden until 10pm. The Chair queried whether these restrictions would be enough since having people in the garden area could create a problem with drunken behaviour elsewhere in the neighbourhood.

- 74.19 The Chair then had a brief discussion with the Applicant about the premises and different areas within it , which were queried on the plans. The Chair confirmed that the venue space was difficult to define within the application. The Chair also queried what areas of the venue were used by the Fringe and the Applicant replied that last year was the first year the Fringe ran it as a theatre venue with performances for audiences of up to 46 people upstairs, which they ran without a licence last year – just a TEN for one weekend. However they confirmed that, from now on, the Fringe had become an essential part of the venue's business and because they will run the space they plan to get a temporary licence to sell cans, beers, ciders and some spirits in a pop up bar at the back of the café. The Applicant also confirmed that in addition to the Fringe, they also required the licence for private viewings for art exhibitions, such as an End of Year on for Sussex University students.
- 74.20 There was then an extended discussion about the different types of art events and the usage that the Applicant would require for the venue. The Applicant confirmed that the space was a co-working space for a maximum of 20 people upstairs and that there were security measures including a secure zone for Caroline Lucas MP, who also worked in an office upstairs. The Applicant also confirmed that the bar area served coffee and drinks during the day and that there was a separate café entrance to the working area. There was then another discussion on the areas and licensing requirements of different spaces within the venue. The Chair also highlighted the problems of aggressive begging and other anti-social behaviour outside the venue. There was also a discussion on the types of events and the length of these that the venue hosted and the Applicant confirmed that mostly music events were a maximum of 3 hours long from 8 – 11pm. Councillor Page asked about whether the Applicant would agree to an end time of 10 pm for serving alcohol and the Applicant confirmed that they would . The Chair then also requested an earlier end time for people in the garden and the Applicant confirmed that they would be happy to agree to these revised conditions. The Chair said that the revised times could be from 1800 – 2200 hours with a limit of 2100 hours for the garden area for events but no licence for the café during the day.
- 74.21 The Chair concluded that the Panel were keen to support the venue and that with the revised conditions, they could all agree to this. The Licencing Officer asked the Chair whether the red line on the plan needed to be discussed and the Chair replied that people would have to buy a drink in the bar and then take it into a meeting room, if required and that the Police were keen that there was to be no vertical drinking in the venue.

74.22 The Police Licensing Officer asked Ms Bamford whether children would be restricted from the events at the venue and Ms Bamford replied that there would be no children in the venue after 7pm. The Police Licensing Officer then queried whether the “no vertical drinking” restriction could be upheld for art exhibitions, where the public may expect to walk around with drinks and he also confirmed that he required legal assistance to be able to stipulate this within the conditions. He also raised the issue of “Condition 2 - Sporting events” and asked whether the Applicant would now want to allow vertical drinking for sporting events during the day. Sarah Cornell, Licensing Officer stated that they had now agreed to take sporting events off the list of conditions required during the day completely. The Police Licensing Officer then queried Condition 2 of Live Music events, since he stated that they were happy for the venue to have vertical drinking for events only. The Chair also queried the use of live or recorded music and Ms Bamford replied that the venue did not have a dancefloor and that condition 5 was therefore agreed, since there would be no vertical drinking during any performance events. The Legal Advisor then queried the licensed area as shown on the plan, as she stated it was too complex to have a red line. The Chair confirmed that a plan had to be agreed that worked and that the Applicant could then have fifteen TEN applications per year, if extra events came up and that these could then be checked every time as they came up by the police.

Summaries

74.23 The Licensing Officer gave the following summary :

“You have heard from the applicant why they believe this application should be granted and you have heard from both representees. Conditions and reduced hours have also been canvassed between all parties.

Licensing Guidance 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 necessary to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- the Guidance;
- Its own statement of licensing policy

The question for the Panel is, has the applicant demonstrated that their application will have no negative impact or whether there are exceptional circumstances to justify departing from its special policy

If the applicant has demonstrated that it won't impact then the Panel should consider granting the application, and any conditions to meet Licensing Objectives and to control cumulative impact should be clear, precise and enforceable.

If the panel believe the application will add to the existing Cumulative Impact and the applicant has failed to demonstrate how they would counteract that negative impact then the Panel should consider refusal. If Panel decides to refuse, it would need to demonstrate that granting would undermine licensing objectives and conditions would be ineffective in preventing problems.”

74.24 The Police Licensing Officer stated the following:

“As mentioned previously, Sussex Police have agreed a number of conditions with the applicant that go some way to promoting the licensing objectives. However, we are raising a representation because we believe the application should be considered by the committee, in light of the unique style of the premises in that it being an event space and the location within the Cumulative Impact Area “.

74.25 The Licensing Authority Officer stated the following:

“The Licensing Team have made this representation to uphold our Statement of Licensing Policy. The premises licences will be refused unless the applicant can demonstrate exceptional circumstances to defer from the Policy. And we ask the Panel, to decide whether they have met these exceptional circumstances.”

74.26 The Applicant, Mr Elwick thanked the Panel for listening and confirmed that if the Licence went ahead with these conditions he thought Middle Street would change a great deal over the next two years. Councillor Page stated that he felt the lighting in this area needed to be changed.

74.27 The Chair thanked the applicants and confirmed that they would be notified of a decision within five working days.

Decision:

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

“This is an application for a new premises licence within the Cumulative Impact Zone (CIZ) and therefore subject to the special policy on cumulative impact as set out in the Statement of Licensing Policy.

The policy states that applications for new premises licences will be refused following relevant representations. This presumption can be rebutted by the applicant if they can show that their application will have no negative cumulative impact. However the Policy is not absolute. The Panel will always consider the circumstances of each case and whether there are exceptional circumstances to justify departing from its special policy in the light of the individual circumstances of the case. If an application is unlikely to add to the cumulative impact of an area, it may be granted. The impact can be expected to be different for premises with different styles and characteristics. The policy states that while a large nightclub or high capacity public house might add to the problems of cumulative impact, a small restaurant, theatre or live music venue (where alcohol is not the primary activity) may be considered exceptional circumstances.

The application is to licence an event space on the ground floor in order to hold cultural, community, charity and fringe events until 23:00 hours. A range of conditions have been agreed with the police.

Representations have been made by the Police, and Licensing Authority, primarily on the basis of the statement of licensing policy and cumulative impact. They stressed the

particularly challenging nature of the immediate area in which this premises is situated which suffers from a high number of alcohol related incidents of crime and disorder.

In their submission the applicants clarified the nature of the events proposed and the layout. They stressed that the day to day running of the café would not involve alcohol. They believed that their style of operation would have a positive impact on the surrounding area and not add to existing problems.

The panel has given careful consideration to all the submissions made. In response to the concerns raised the applicants were willing to be flexible about times for sale of alcohol and agreed to a revised start time for sale of alcohol of 18:00 hours and a terminal time of 22:00 hours every day. They further agreed to close the garden earlier for consumption of alcohol.

The panel recognised that the applicants were seeking a limited alcohol licence to complement the small scale cultural events offered and as such the application could be considered exceptional under the policy as alcohol is not the primary activity. The amended hours and conditions agreed with the police further illustrated this. Overall the panel considered that with the revised times and conditions, granting this application was not likely to add to problems of cumulative impact in the area and was exceptional.

The application is therefore granted with the following times for sale of alcohol: 18:00 hours to 22:00 hours every day and the conditions agreed with the police. In terms of the police conditions (at pages 30 – 32 of the agenda pack) we make the following amendments. Condition 5 to read: *During the performance of live or recorded music, the sale of intoxicating liquor shall be for consumption by seated persons and there will be no vertical drinking, excluding carrying drinks purchased at the bar to seats. Exclusion to this is when background music or no music is being played such as during an art exhibition.* Condition 10 shall now state that *'the garden area will be closed at 21:00 hours for the consumption of alcohol.'* Condition 11 shall now state: *'From 21:00 hours to close the garden area may remain open to accommodate smokers only. No form of refreshments to be permitted outside during this time and numbers will be limited to a maximum of 8 persons at any one time.'*

The meeting concluded at : 11.25 am

Signed

Chair

Dated this

day of