

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

10.00am 25 MARCH 2019

HTH ROOM G90

MINUTES

Present: Councillors: Mo Marsh (Chair), Julie Cattell and Lizzie Deane

Officers: Liz Woodley (Senior Lawyer), Becky Pratley (Licensing Authority Officer), Emma Bullen (Licensing Authority Officer) and Shaun Hughes (Democratic Services).

PART ONE

87 TO APPOINT A CHAIR FOR THE MEETING

87.1 Councillor Mo Marsh was appointed Chair for the meeting.

88 PROCEDURAL BUSINESS

88a Declaration of Substitutes

88.1 Councillor Julie Cattell was substituting for Councillor Adrian Morris

88b Declarations of Interest

88.2 There were none.

88c 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.

88.3 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of Item 71.

89 KEMPTOWN CARNIVAL 2019 LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

89.1 The Chair introduced the Panel

- 89.2 The Panel considered a report of the Director of Neighbourhoods, Communities and Housing to determine an application for a Time Limited Premises Licence under the Licensing Act 2003 for Kemptown Carnival 2019.

Introduction from Licensing Officer

- 89.3 The Licensing Officer – Becky Pratley stated the following:

“This is an application for a new time limited premises licence for Kemptown Carnival 2019, the area is shown in detail on the map on page 5 of the large addendum document. I also have A3 size copies of the maps for ease of reference.

Our documents for this hearing includes the Committee Report (pages 1-51) the large addendum (210 pages circulated 19th March) and a second 8-page addendum containing the Police representation withdrawal letter (circulated 20th March).

The applicant, The Kemptown Carnival Community Interest Company (CIC,) are applying for Live Music, Recorded Music, Performance of Dance, Anything of a similar description to those three activities, performance of plays and Sale of Alcohol on Saturday 1st June from 10am to 6pm.

The opening hours of the event are detailed as 7am to 9.30pm.

The licensing team received 10 representations in total, 7 in support of the application and three representations against the application.

Of the three representations against the application, two were from local residents and one from Sussex Police. Relevant concerns raised in representations were in relation to the licensing objectives Prevention of Crime and Disorder, Public Safety, the Prevention of Public Nuisance and the Protection of Children from harm.

An agreement between the applicant and Sussex Police was reached, which resulted in Sussex Police withdrawing their representation. The letter withdrawing their representation and explaining the rationale behind this can be found in the second addendum that was circulated on 20th March and is entitled ‘Addendum-Police withdrawal’.

The two remaining resident representations against the application can be found in Appendix C of the Committee report attached at Appendix C on page 33 and then 41 of today’s papers.

The supporting representations can be found at Appendix D from pages 43-49 of the Committee Report.

The part of the premises licence from the Junction Of Upper / Lower Rock Gardens along upper St James’ Street until the junction with Upper Bedford

Street (shown on the large plan in the red Zone 1, from D1 –E5 sits within the Special Stress Area which, as stated in our Statement of Licensing Policy at 3.2 is deemed an area of special concern in terms of the levels of crime and disorder and nuisance experienced. The policy states that new applications for premises within the SSA will not be subject to the presumption of refusal, but operators will be expected to pay special attention when drawing up their operating schedules and to make positive proposals to ensure that their operation will not add to the problems faced in these areas.

The applicants operating schedule can be found on pages 25-29 of today's agenda.

Historically this event operated using Temporary Event Notices in 2006, 2007, 2011, 2012 and 2013. Two-time limited Premises Licences have previously been issued in 2014 and 2016 for this event. The 2016 premises licence was for the same layout as applied for today. I have copies of both of the previous licences and the 2016 panel decision letter from the hearing held on 11th May 2016, should the panel wish to see these?

The Premises Licence Holder for both the 2014 and 2016 time limited premises licences was Geoffrey Bowden but I understand Mr Cook was involved as the Event Director and has been involved with the event for a number of years.

The adoption of the Matrix approach to licensing decisions found in the statement of licensing policy and this agenda on p13 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.

In addition to this, in the notes on the matrix, our SoLP at p.17 paragraph 9 states that outdoor events will be supported where arranged through the Council's Event planning process. Which is a series of multi-agency meetings where the Event Management Plan (that appears as Appendix F, the large 210 page addendum with this Committee Report) is scrutinised by emergency services and relevant council departments. In addition, the Safety Advisory Group undertake further scrutiny of the Event Management Plan.

Our Statement of Licensing Policy states that generally, regulated entertainment in the open-air including tents and marquees should have a maximum closure of 23.00 hrs. Earlier hours may be imposed in sensitive open spaces or near residential areas.

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

Questions to the Licensing Officer

- 89.4 The Chair was informed by the Licensing Officer – Becky Pratley that the application had come to the panel as the threshold of possible attendees had

been reached and that outdoor events should be limited to reduce impact on the community. It was also stated that there were no other responsible authority objections and that the areas applied for were beyond the Cumulative Impact Zone and Special Stress Area. Councillor Deane was informed that the objectors, including Sussex Police are satisfied following revisions to the event. Councillor Cattell was also informed that the event was to be like the event held in 2016.

Representations from Responsible Authorities

89.5 Responsible authorities were not in attendance.

The Applicant

- 89.6 The Applicants represented by Ian Baird (Whiskey Bravo Pro), Matt Cook (Event Director) and Claire Bryant (Event Director) addressed the panel and stated that the event has a historical basis and has not taken place for 2 years as the management team wanted to ensure the 2019 event is properly prepared and managed.
- 89.7 The applicants wanted it noted that the event has received huge support from residents. The footprint of the total event will copy that played out in 2016 with improved management planning and security. Objectors have been contacted and the issues addressed in the event management plan. It was stated that this was for residents only and residents' input has been welcomed. The Arts Council support the event which is seen to encourage the arts.
- 89.8 The applicants are aware that there were issues relating to toilets at the 2016 event. The location and signage are to be improved along with management knowledge of scaffolding around the area, which prevented prominent placement in 2016.
- 89.9 It was stated that the security has been increased with the fully trained staff located through-out the event and at entrance and exit points. The event has been split into 3 zones to help with security who have been trained in the detection of drugs and will be overseeing the bringing of alcohol onto the site. Security officers will deal with issues at first point of contact, such as prevention of entrance, ejection and request Police assistance when necessary.
- 89.10 Noise issues raised by objectors mainly related to low frequency. The management team recognised this was a problem for residents in 2016 and have employed an acoustic consultant to ensure performance locations are viable. Residents have been given contact details of 'who to call on the day' if they have any issues.
- 89.11 The panel were informed that many groups were to be involved including St Marys Church, St George's Church, Brighton Table Tennis Club, St Johns, Sussex House, Somerset Day Care Centre, as well as other arts and community partners. It was noted that among these groups' safe spaces, quiet

spaces, emergency areas, and vulnerable persons spaces would be provided through out the event.

- 89.12 It was noted that the event will close at 17.00 to help residents. The clean-up will be carried out by City Clean and paid for by the organisers, at no cost to the city, with a final finish at 21.00.

Questions to the Applicant

- 89.13 The Chair was informed that all helpers will have knowledge of toilet locations and they will be well signposted and the same number as 2016.
- 89.14 Councillor Lizzie Deane was informed that alcohol sales would be permitted at stalls that were mainly related to the existing pubs in the area. There will be a logging system of those attendees who appear to be drunk, which can be handed to Police is necessary. It was reiterated that Security can enforce and challenge attendees regarding alcohol and sales will not start before 11.00am.
- 89.15 Councillor Julie Cattell was informed that all residents of roads to be closed had been contacted, mostly in person and any objectors and informed that the city was not paying for the clean-up.
- 89.16 The applicants were also pleased to confirm that Brighton Palace Pier will be supporting the event with partnership funding. It was also noted in response to the panel that the management team were co-ordinating all arrangements with the Police.
- 89.17 The panel were informed that mostly one-use cups, bottles etc would not be used where possible. All event waste will be separated into recyclables off site after the event.

Summaries

- 89.18 The Licensing Officer summed up: "This is an application for a new time limited premises licence for Kemptown Carnival 2019.

The applicant, The Kemptown Carnival Community Interest Company (CIC,) are applying for Live Music, Recorded Music, Performance of Dance, Anything of a similar description to those three activities, performance of plays and Sale of Alcohol on Saturday 1st June from 10am to 6pm, and now with a change of times for the Sale of Alcohol from 11am to 6pm. The opening hours of the event are detailed as 7am to 9.30pm.

Two relevant representations are outstanding against this application and you have read these and heard from all parties present. You have also seen communications showing an agreement between the applicant and Sussex Police as well as the most up to date Event Management Plan.

The premises sits within a Special Stress Area, (the part of Zone 1 detailed earlier) which as stated in our Statement of Licensing Policy is deemed an area

of special concern in terms of the levels of crime and disorder and nuisance experienced. The policy states that new applications for premises within the Special Stress Area will not be subject to the presumption of refusal, but operators will be expected to pay special attention when drawing up their operating schedules and to make positive proposals to ensure that their operation will not add to the problems faced in these areas.

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 appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- the Home Office Section 182 Licensing Guidance;
- its own statement of licensing policy

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

After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule.

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.

89.19 The applicants summed up: "We represent the community and will manage this year to the best of abilities".

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

Decision:

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

The panel has read all the papers including the report of the Executive Director of Neighbourhoods, Communities and Housing, relevant representations and the Addendum to the agenda containing the Kemptown Carnival 2019 ESMP and Major Incident Plan. We listened to and considered all the submissions made.

The panel have considered the individual merits of the application as well as the policy context. The members appreciated the positive measures that the applicant had put in place, as evidenced by the comprehensive Event

Management Plan. They considered that the package of measures would ensure that the event would not add to the problems in the area, and as such this time limited application should be granted subject to conditions.

The application is therefore granted with the following:

- A condition restricting the sale of alcohol from 11.00 hours
- Conditions consistent with the Operating Schedule
- Conditions proposed by Sussex Police subject to the deletion of the words “and the Safety Advisory Group (SAG) or the equivalent.” in Condition 2.

The imposition of conditions is appropriate for the promotion of the licensing objectives.

90 OKKA COFFEE LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

90.1 The Chair introduced the Panel

90.2 The Panel considered a report of the Director of Neighbourhoods, Communities and Housing to determine an application for a Time Limited Premises Licence under the Licensing Act 2003 for OKKA Coffee.

Introduction from Licensing Officer

90.3 The Licensing Officer – Emma Bullen stated the following:

“The application is for a new premises licence for Okka, 206 Dyke Road, Brighton. The application is for the sale of alcohol from 8:00am until 11:00pm Monday to Sunday. The applicant is proposing to sell ESPRESSO BASED COCTAILS AND HIGH BRANDED QUALITY ALCOHOLIC DRINKS.

The Applicant has agreed conditions with the Police Licensing Unit and the Environmental Protection Team should the panel agree to the application.

There has been one representation from a member of the public on the grounds of the prevention of public nuisance. As you can see on the rep which appears on page 67 of the agenda also mentions a condition on the premises lease that stating that alcohol should not be sold or supplied or permitted to be sold or supplied.

4.15 NOT HOLD AUCTION OR SELL LIQUOR OR SECOND HAND GOODS

Not to carry on or permit any of the following activities on the Demised Premises:-

- 4.15.1 Sale by auction; or
- 4.15.2 The sale or supply of intoxicating liquor; or
- 4.15.3 The sale or purchase of second hand goods

However, this is a condition of the applicants lease and would be enforced by the Managing Agents and is therefore is not a matter that falls under the Licensing Act 2003.

Dyke Road falls within Preston Park Ward, which is outside the Cumulative Impact and Special Stress areas as defined in the Statement of Licensing Policy.

The adoption of the Matrix approach to licensing decisions found in the Statement of Licensing Policy 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 premises falls within 'Other areas' under the Café category in the Matrix."

Questions to the Licensing Officer

- 90.4 Councillor Mo Marsh was informed that issues relating to a landlord agreement were a private matter and panel can only deal with licensing matters.
- 90.5 Councillor Lizzie Deane was informed that a breach of lease was not a licensing matter.

Representation from Local Residents

- 90.6 Emma Norman, supported by Barry Norman taking notes, stated that they had been a neighbouring resident for 22 years and that there had not been an alcohol licence when they moved into the property. Ms Norman commented that there was insufficient sound proofing between the properties and was concerned about any increase in noise. As there are others in the area, Ms Norman quired the need for the licence. It was also noted that the garden area to the rear of the property was to be included as a seating area for customers and this was considered an invasion of privacy as her bedroom and kitchen overlook the rear garden noted in her deeds and classed as a fire exit for the apartment. Ms Norman expressed concerns relating to noise and smoke from customers. It was also noted that students from the local school use the shop on a regular basis.

Questions for the resident

- 90.7 Councillor Mo Marsh was informed that the shop usually closed at 5pm during the week and weekends. It was also confirmed that the new time would be 11pm Monday to Sunday.

Representation by the Applicant

- 90.8 The applicant, Mr Kamil Buer, informed the panel that the application stated 11pm closing however a 7pm closure time would be more likely at this time. Mr Buer stated that he wanted to serve acholic drinks such as wine and cocktails following customer requests. The applicant confirmed that the garden is not

open to customers at the moment and he is under the impression that he owns the garden, however, he was happy to exclude the garden from the application following the neighbour's concerns. Mr Buer is looking to sign a new 12 year lease on the shop with extended hours. With regards to noise between floors, Mr Buer felt that this was a building not a licensing issue.

Questions for the Applicant

- 90.9 Councillor Lizzie Deane was informed that the alcohol on sale would be cocktails and wine. Food would be light snacks only not main meals. A closing time of 7pm would be acceptable to the applicant and the rear garden area could be covered if necessary. The capacity would be 25 chairs, 21 inside and 4 outside on the front pavement. It was also confirmed that there were not kitchen facilities for large meals.
- 90.10 Councillor Julie Cattell was informed that the front door access was through a common passageway, shared with the apartment above the shop.
- 90.11 Councillor Mo Marsh was informed that 11pm was requested as the closing time, however 7pm was acceptable. The extra hours are being requested as not many customers use the shop during the existing hours. Customers have requested later hours. The start time would be 12 noon for the sale of alcohol, not 8am when the shop opens. The current choice of food includes croissants, croque monsieur, cakes, cookies and sandwiches. It was also confirmed that alcohol would not be on sale customers who sit outside the shop on the front pavement.
- 90.12 It was confirmed to Resident, Emma Norman, that cocktails, the ingredients and wine would be on sale under the licence. Two staff would be sufficient to manage the evenings and no more would be employed.

Summaries

- 90.13 The Licensing officer summed up: "To summarise, this is an application for a new premises licence for Okka, 206 Dyke Road, Brighton. You have heard from all the parties present and read the paperwork including agreements reached.

Licensing Guidance (9.34) 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;
- 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. (1.1 SoLP).

LG 9.26 After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule.

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. The penalties for breaching conditions are severe, with an unlimited fine amount and/or 6 months imprisonment, so this is particularly important. (LG 10.14)

9.27 Alternatively, the licensing authority may refuse the application on the grounds that it is necessary for the promotion of the licensing objectives.

- 90.14 Emma Norman summed up by stating the property was not suitable and the application was not right for the community.
- 90.15 Kamil Buer, the applicant summed up by stating that there was community support for the application.

DECISION:

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

The panel has read all the papers and listened carefully to all the points and submissions made today.

The application is for a new premises licence, authorising the sale of alcohol for consumption on the premises between 08.00 and 23.00 hours every day. One representation was received from the occupier of residential premises directly above the Coffee Shop. It raised concerns relating to the prevention of public nuisance licensing objective. We decided that some of the representation was not relevant to our consideration, in particular the suggestion that the sale of alcohol would breach the terms of the shop’s lease. That is a private law matter, to be resolved between lessor and lessee.

The premises are not located in either the Cumulative Impact Zone (CIZ) or the Special Stress Area, so the application falls to be determined on its own merits in accordance with the council’s Statement of Licensing Policy.

We heard from the objector that she had been in occupation of her flat for 22 years. Throughout that period the shop has had a varied history. It currently operates as a coffee shop between the hours of 9 am to 5pm. The shop and her flat are contained in a Victorian building with insufficient sound proofing. There is a problem with noise transmission. There are tables and chairs outside on the pavement. Noise and smoke from patrons using these facilities requires her to close her windows. Deliveries are made to the shop at 6.30 am in the morning. She is concerned that deliveries of alcohol could be made later and she is concerned that alcohol deliveries could go later into the day, or earlier into the morning.

Other concerns were raised about the applicant's rights to use the garden area; the means of escape from fire and the demand for a shop supplying coffee and alcohol, in the area. However, these were not issues we could properly consider in determining this application. The right to use the garden was a private law matter, the means of escape from fire was subject to an alternative regulatory regime (the Regulatory Reform (Fire Safety) Order 2005) and demand is not a licensing consideration.

We heard from the prospective DPS, a director of the applicant company. The application had been submitted in response to interest from customers for an outlet selling coffee and alcohol. He confirmed that noise transmission in the building was a problem. He could hear noise emanating from above his shop.

In response to questions from the Panel and the objector the applicant's representative made the following comments:

- His intention is to sell espresso-based cocktails, spirits and wine
- The current food offer comprises light snacks such as croissants, croque monsieur and sandwiches. It does not include main meals. Were the licence to be granted, cheese may be added as a further option to complement wine.
- He is very reluctant to accept a condition limiting sales of alcohol to 19.00 hours, although his intention is currently only to sell alcohol until that time.
- There is a small kitchen, but no real cooking facilities.
- Assuming that a right to use the garden/outside space could be established, he intended to refurbish the area, and put a roof on it.
- Two members of staff would work at the premises in the evening, so no other security was required.

The Panel was concerned about the adequacy and accuracy of the plan accompanying the application. There is no orientation or scale marked on it. The Members found it hard to reconcile the plan with the photographs submitted with agreement at the hearing by the objector. It made assessing the impact of the proposals problematic.

The photographs show tables and chairs on the pavement outside the premises. That area was not shown on the application as being part of the area to be licensed. It was not clear how the area was to be used and managed.

It is not in dispute that there is a problem with noise transmission at the premises. The Panel considers it more likely than not that premises offering alcohol for sale will attract more custom than a coffee shop, and that more noise will result.

The Police had proposed a condition that substantial food should be available at all times. Members are not satisfied that this condition can be achieved with the limited kitchen facilities available. The requirement for substantial food to

be available is important to prevent the premises from becoming a public house at a future date.

Having considered all the information, on balance we have decided not to grant a licence for the sale of alcohol for consumption on the premises.

Signed

Chair

Dated this

day of

The meeting concluded at Time Not Specified

Signed

Chair

Dated this

day of