

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

2.00pm 26 MARCH 2019

HTH RM G70

MINUTES

Present: Councillors : Morris (Chair); Cattell and Hyde

Officers in Attendance : Jim Whitlegg, Regulatory Services Manager; Rebecca Sidell, Lawyer and Penny Jennings, Democratic Services Officer

PART ONE

83 TO APPOINT A CHAIR FOR THE MEETING

83.1 Councillor Morris was appointed Chair for the meeting.

84 PROCEDURAL BUSINESS

84a Declaration of Substitutes

84.1 There were none.

84b Declarations of Interest

84.2 There were none.

84c Exclusion of the Press and Public

84.3 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.

84.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of any item on the agenda.

85 VARIATION OF A PREMISES LICENCE PARK & SHOP, WOODINGDEAN

85.1 The Panel considered a report of the Executive Director, Neighbourhoods, Communities and Housing requesting that they determine an application for Variation of a Premises Licence under the Licensing Act 2003 in respect of the Park and Shop Premises, located at 534-540 Falmer Road, Woodingdean, Brighton. The applicant, Mr Kevin Webb was in attendance accompanied by the Area Manager for the Park Garage Group, Ms Gill Sheratt and Sarah Clover, a Licensing Barrister acting on their behalf.

Anna Staplehurst was in attendance on behalf of Sussex Police and was accompanied by Tim Knowles, a Licensing Barrister acting on their behalf. Mark Savage-Brookes was in attendance on behalf of the Licensing Authority.

Introduction from the Licensing Officer

85.2 The Licensing Officer highlighted the following:

-That the application was for variation to the existing premises to 1. Change the floor plan to reflect changes to the layout of the store; and

-Increase the existing level of alcohol sales - the store had the benefit of 24 hour opening and the application was to increase the alcohol sales to 24 hours so that alcohol could be sold (along with other goods) during the same hours as the store was open for business. The service of goods would remain via a night pay window to ensure that crime and disorder was prevented and a change to condition 4 of the existing licence would be needed in order to reflect that change.

Addition of late-night refreshment.

85.3 The application needed to be considered on its individual merits having regard to the authorities Statement of Licensing Policy (SoLP) and to its matrix approach. The premises did not fall in the Cumulative Impact Area or the Special Stress Area. Two representations had been received in respect of this application from Sussex Police and the Licensing Authority expressing concerns relating to the Prevention of Crime and Disorder and the Prevention of Public Nuisance The Panel needed to consider each application on its own merits and departure from the matrix policy was expected only in exceptional circumstances and would not include quality of management or size of venue except where this was explicitly stated. Any conditions needed to be clear, precise and enforceable. Alternatively, the Panel could refuse the licence if in their view it had been demonstrated that granting would undermine a licensing objective and conditions would be ineffective in preventing problems.

Questions to the Licensing Officer

85.4 There were none at this stage, the Panel therefore proceeded to hear the submissions by each of the parties.

Representation by the Police

85.5 Anna Staplehurst and Mr Knowles spoke to the Police representation lodged in objection to the proposed licence variation. In addition they also wished to draw attention to the failed underage test purchase which had taken place at the premises on 14 March 2019 as part of a joint initiative between trading standards and officers of the licensing team. This had been circulated as an addendum and in their view supported the representation made by the licensing authority and served to underline their concerns.

85.6 Ms Clover referred to the additional papers provided and to new information provided and contended that it was inappropriate for this to be considered in relation to this

application although the applicant or the area manager might be able to respond in relation to the incident referred to when making their submission.

- 85.7 When applying the licensing authority's own matrix approach the premises relating to "other areas" in which this premises were located the hours requested fell outside the timings for licensable activity which were normally accepted, a terminal hour of 23:00 normally apply, although within densely residential areas that could be earlier. The Police were firmly of the view that a 24-hour premises licence would increase the availability of alcohol in this area and lead to a potential increase in crime and disorder and public nuisance and alcohol fuelled anti-social behaviour.
- 85.8 The applicant had not referred to the Statement of Licensing Policy (SoLP) in their application or offered anything that Sussex Police believed constituted any reasoning why the SoLP should be departed from. The Police had not consulted with Sussex Police prior to submitting their application and no further mitigation or exceptional circumstances had been discussed or offered.
- 85.9 In answer to questions by Panel Members it was confirmed that it was usual for discussions to take place between the applicants and the Police and in instances where additional hours were being requested it was usual for additional measures to be offered to provide reassurance that robust measures were in place to mitigate against any potential nuisance, crime or disorder. In this instance that had not been done and the Police would have expected that it would have been.

Representation by the Licensing Authority

- 85.10 Mr Savage Brookes spoke on behalf of the Licensing Authority in its role as a responsible authority. A representation had been made in order to set out its concerns that the proposed variation to the existing licence would have a negative impact on crime and disorder and public nuisance. There were concerns that the application did not meet the requirements of the Council's SoLP, with regard to applications made for Off Licences or Late-Night Takeaways within the "Other Areas" where there was a presumption in the absence of exceptional circumstances being put forward for departure from the Matrix Model that a terminal hour of 11.00am would apply.
- 85.11 Where a departure was requested, applicants were expected to include positive proposals with their application detailing how they would manage any potential risks. In instances where specific policies applied in the area applicants were also expected to demonstrate an understanding of how the policy would impact on their application and to set out any measures they would take to mitigate that impact and why they considered their application should be an exception to policy.
- 85.12 The application had been assessed carefully with particular reference to the Matrix and no exceptional circumstances had been provided. There were therefore concerns that allowing 24-hour alcohol sales and all night hot food and drink would impact on the licensing objectives relating to the Prevention of Crime and Disorder and the Prevention of Public Nuisance and would be contrary to the Council's SoLP.

Representation by/on Behalf of the Applicants

- 85.13 Ms Clover stated that the one failed test purchase was a separate issue from the application to vary the existing licence the applicants been operating from the premises for a number of years during which time there had been no incidents and the premises had consistently been well run and had given no cause for concern. The matter in question had been taken very seriously and the member of staff advised and situation dealt with. This represented a one-off “blip” which could occur in any premises however well run.
- 85.14 In answer to questions of from the Panel Members, Ms Clver stated that the Council’s Matrix approach was flawed and would be vulnerable to challenge. The Legal Adviser to the Panel explained that advice had been given to the Licensing Authority by Philip Colvin QV who was also a licensing expert and that his view was different from that being advanced by Ms Clover. The Panel needed to consider the application before them on its individual merits set against the licensing policy as it stood.
- 85.14 Panel Members sought clarification of the measures which would be in place to ensure that those who were under-age or who were already under the influence of alcohol did not seek to purchase alcohol late at night and in respect of the general measures put to be put into place to ensure that late night noise nuisance or other anti-social behaviour did not ensue. It was explained that purchases would be through a hatch located to the side of the premises, sales could be observed via CCtv and sales could therefore be carefully monitored and would not be made inappropriately.
- 85.15 In answer to further questions it was explained that the request to extend the existing hours of operation was being requested in response demand by regular locally based customers who required this service along with the provision of groceries and other supplies on their way home for consumption in their own homes, thus they would not remain the vicinity of the site and the applicants contended that this was unlikely to become a magnet for those seeking access to alcohol late at night as this was subsidiary to the premises mail use as a petrol station and would be used primarily by local residents. The alcohol available for sale would not be cut-price and would be subsidiary to other purchases made so would not attract problem or under-age drinkers. This business model had been successfully adopted by other outlets in this chain and had not given rise elsewhere to any issues which would compromise the licensing objectives.

Summaries

- 85.16 Having listened to all of the points raised by the applicants in support of their application and the responses given to questions asked by the Panel and there being no further questions the Chair invited each of the parties to make their closing submissions. The Licensing Officer gave the following summary:
- 85.17 This was an application for a Variation to the existing licence in respect of Park and Shop at 534 -540 Falmer Road BN1 6ND. The Panel had received a detailed presentation from the applicant, the Area Manager and Ms Clover, Barrister at Law in support of their application. Representations had also been received from Ms Staplehurst and Tim Knowles, Barrister Law setting out their objections to the proposed extension of existing hours during which alcohol would be available for sale such that it would if granted be permitted 24 hours daily. Mr Savage-Brookes had been in

attendance representing the Licensing Department and had set out their objections to the proposed variation to the existing licence.

85.18 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; and
- its own statement of licensing policy.

85.19 The Panel needed to consider each application on its own merits. Departure from the matrix policy was expected only in exceptional circumstances and would not include quality of management or size of venue except where this was explicitly stated. Any conditions needed to be clear, precise and enforceable. Alternatively, the Panel could refuse the licence if in their view it had been demonstrated that granting would undermine a licensing objective and conditions would be ineffective in preventing problems.

85.20 Ms Clover gave the closing submission on behalf of the applicants stating that in there were no good reasons for refusing the application at this premises which had attracted no past problems and were responsibly run, there was no reason to think they would give rise to any now. The applicants considered that the Council's existing matrix policy was flawed and could be challenged and contended therefore that the request to vary the existing licence as requested should be granted.

85.21 Mr Knowles spoke on behalf of the Police stating that notwithstanding all that had been said they remained of the view that the proposed increase in hours during which alcohol would be available for sale would fail to uphold the licensing objectives in that it would assist in promoting a 24 hour drinking culture which would encourage irresponsible or excessive drinking as alcohol would be readily available. The applicant had not referred to the Council's Statement of Licensing Policy (SoLP) in their application or offered anything which Sussex Police believed constituted reasons why the SoLP should be departed from in this instance. The applicant had not consulted with Sussex Police prior to submitting their application and accordingly no mitigation or exceptional circumstances had been discussed or offered.

85.22 Mr Savage-Brookes spoke on behalf of the Licensing Authority summarising their objections to the proposed variation. The application had been looked at carefully, and particular attention had been paid to the Matrix and to any exceptional circumstances provided for departing from the Matrix, no exceptional circumstances for departing from the existing policy had been provided. There were therefore concerns that allowing 24-hour alcohol sales and all night hot food and drink would impact on the Licensing Objectives of the Prevention of Crime and Disorder or the Prevention of Public Nuisance.

85.23 The Panel's decision was as follows:

The Panel had read all the papers, including the further information submitted by the responsible authorities and by the applicants, and had listened carefully to all the submissions made by the parties at the hearing.

This was an application for a variation of the premises licence in three parts. The first part is to amend the plan to reflect changes to the store. The second is to add the provision of late-night refreshment from 23:00 hours to 05:00 hours. The third and most contentious part was to increase the hours for sale of alcohol from 23:00 hours to 24 hours to be in line with the opening hours of the shop.

There are two relevant representations from the Police and the Licensing Authority. Both had concerns about the likely impact upon the licensing objectives of a 24-hour licence for sale of alcohol off the premises and to a lesser extent late night refreshment and are concerned that the application is contrary to the Council's Statement of Licensing Policy ('our policy') and in particular the Matrix approach adopted therein. It was submitted by the police that a 24-hour licence was not appropriate in this residential area, and that it was likely to be attractive to persons coming back from the city, and students, and would be a magnet in the absence of any other late night premises in the area and would lead to issues of public nuisance and anti-social behaviour. A recent failed test purchase at the premises on the 14th March when a 16 year old volunteer was sold alcohol has called into question the adequacy of the training at the premises and the ability of the premises to promote the licensing objective of the protection of children from harm, and was of concern for the future.

Sarah Clover, barrister representing the applicants, disputed that there was any evidence or likelihood of negative impact upon the licensing objectives in allowing this application. She pointed to the operation of the premises as a garage shop which in her view behaved differently from an 'off licence', was more expensive, and would not be susceptible to issues of pre or post loading. She pointed to a long and exemplary record of these premises and the Park Garage Group generally. In terms of the failed test purchase it was argued that this was a single and unique transgression in to be put into the context of 18 years of unblemished trading, and was not directly relevant to the application for extension of hours. Regarding our policy, Ms Clover submitted that in particular the Matrix approach was an unlawful aspect of the policy as it was contrary to the Section 182 guidance, indicated a blanket approach to applications, and proposed arbitrary times without disclosure of any evidence. It was denied that the application was deficient by not addressing the policy as was asserted by the responsible authorities. Further it was argued that the submissions of the responsible authorities in relation to harm were generalised and speculative, and that there were no complaints from local residents. If the existence of exceptional circumstances was required as per the Matrix, Ms Clover put forward as possibilities, the length of time that the premises had operated without issue or complaint, the high level of investment in the premises and the different nature of a petrol station garage shop. During the hearing further conditions were offered including engaging the services of 'Serve Legal' to conduct test purchases.

The legal adviser to the panel and the licensing officer gave advice regarding the status of the Council's Licensing Policy. It was stressed that the policy was properly made and had never been challenged. It was denied that the Matrix approach was unlawful or contrary to guidance and submitted that such an approach was permissible and one which was endorsed by Philip Kolvin QC in the textbook, Licensed Premises: Law,

Practice and Policy. The Matrix notes stated at the outset that each application would be considered on individual merit and was not therefore a blanket approach.

The licensing officer clarified that the licence was granted in September 2014 and not earlier as was asserted by the applicants. It was granted following a hearing and contained several conditions including 'Challenge 25'.

The panel has carefully considered all the points made. In terms of our policy we do not accept that it is unlawful; it was the result of extensive consultation and liaison with the responsible authorities and in our view promotes the licensing objectives. The Matrix is based upon an assessment of risk posed by different types of premises and was arrived at after extensive consultation. It is not absolute and can be departed from in appropriate circumstances.

In relation to this application the panel consider that the change of plan is not objected to and can therefore be granted. The panel is not willing to depart from our policy in relation to the late-night refreshment as we do not consider that allowing this will undermine the licensing objectives in the context of this operation which is a garage shop trading from a hatch during licensable hours and where late-night refreshment including hot drinks may be beneficial.

However, the panel did not grant the application for extension of sale of alcohol. While the panel must not engage in unfounded speculation it must assess the likely risk in terms of the licensing objectives of the operation proposed. The panel appreciate that the premises is a garage shop and that there is not a specific category for this in our policy. None the less it is an outlet selling alcohol for consumption off the premises and thus comes within the off-licence category in the matrix. Off licences give rise to concerns and these are expressed within the policy. An off licence operating 24 hours is on the face of it a high-risk operation and it was against policy. The police had concerns that a 24 hour off sales outlet in this area will undermine the licensing objectives. The panel share those concerns; alcohol will be available for a longer period into the night and early hours in a residential area and is likely to attract those customers who may already have consumed alcohol perhaps coming back from a night out or otherwise and who may cause problems. These could include children attempting to purchase alcohol. The recent failed test purchase cannot give us confidence that the policies and training put forward as exemplary by the applicants are being adhered to in practice, certainly not at present. To extend hours must in our view increase the risk in this respect. We have fully considered the applicant's submissions but they have not convinced us that this aspect of the variation is appropriate and would promote the licensing objectives. The panel notes that the length of time operating with a premises licence since 2001 without issue, one of the arguments relied upon to demonstrate exceptionality, is not valid, the licence having been granted in September 2014. Further, when questioned by the panel regarding training in age-restricted sales, the applicants were clearly unfamiliar with the condition on their licence relating to intervals of refresher training which stated 8 weeks rather than 3 to 6 months as suggested. While the panel would support some of the conditions proposed towards the end of the hearing by the applicants they do not sufficiently mitigate the risk posed in our view by allowing this part of the variation which is therefore refused in order to promote the licensing objectives.

85.24 **RESOLVED** – That the application for variation of the premises licence in respect of Park and Shop, 534-540 Falmer Road, Woodingdean, Brighton BN2 6ND be refused for the reasons set out above.

The meeting concluded at 5.35pm

Signed

Chair

Dated this

day of