

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

10.00am 23 SEPTEMBER 2019

HOVE TOWN HALL, ROOM G79

MINUTES

Present: Councillor ; Appich, Davis and Deane

Officers: Mark Savage-Brooks (Licensing Officer), Rebecca Siddell (Lawyer), Gregory Weaver (Democratic Services Officer)

PART ONE

27 TO APPOINT A CHAIR FOR THE MEETING

Councillor Lizzie Deane was appointed Chair for the meeting.

28 PROCEDURAL BUSINESS

28a Declaration of Substitutes

28.1 There were none.

28b Declarations of Interest

28.2 There were none.

28c Exclusion of the Press and Public

28.3 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Licensing Panel considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I of the Act).

28.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of Item 29 onwards.

29 NO 32 LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

29.1 The Panel considered a report of the Executive Director of Neighbourhoods, Communities & Housing in relation to an application for a New Premises Licence under the Licensing Act for No. 32, 32 Duke Street, Brighton. Present at the hearing were: Behnam Samandi (Applicant), Nick Perkins (Solicitor), Mark Savage-Brooks (Licensing Officer), Rebecca Siddell (Lawyer), Warren Francis (Local Resident).

Introduction from the Licensing Officer

29.2 The Licensing Officer highlighted the following:

- This was an application for a new premises licence for No. 32 at 32 Duke Street, Brighton.
- The application proposed the sale of alcohol (on and off the premises) and regulated entertainment activities of Films, Live Music, Recorded Music, Performance of Dance, any entertainment similar to live or recorded music performance of dance from:
 - Sunday to Wednesday 8:30am – 2:00am and
 - Thursday to Saturday 8:30am – 4:00am
- The application also proposed late night refreshment:
 - Between 11:00pm and 2:00am Sunday to Wednesday and;
 - Thursday to Saturday 8:30am – 4:30am.
- The opening times proposed were:
 - 8:30am – 2:00am Sunday to Wednesday and;
 - 8:30am – 4:30am Thursday to Saturday.
- The licensing team received one representation from a local resident. Relevant concerns raised in the representation were in relation to the Licensing Objectives the Prevention of Public Nuisance and the Prevention of Crime and Disorder.
- The applicant and Sussex Police agreed an amendment to the initially applied for operating times and also agreed a list of conditions to be added to a granted licence within the consultation period and these included a restriction to where off sales of alcohol could be consumed.
- The representation and police agreement could be seen in Appendix C with the representation on pages 27 – 28 and the police agreement on pages 29 – 34.
- The premises was situated in the City's Cumulative Impact Area. The Special Policy for Cumulative Impact stated that applications for new licences would be refused following relevant representations. The applicant could rebut this presumption of refusal if they could show that their application would have no negative cumulative impact on licensing objectives.
- In light of there being an agreement of conditions reached, if this application was granted, the conditions applied to the Premises Licence would be all of those agreed with Sussex Police.
- The panel was reminded that each application would be given individual consideration on their own merits.

Questions to the Licensing Officer

29.3 In response to Councillor Appich, the Licensing Officer clarified that although the application form stated the address as 32 Duke Street, the previously lapsed licence was for 5-8 Duke Street.

29.4 In response to Mr Perkins, the Licensing Officer stated that that the last noise complaint was received in August 2014, it was clarified that this was resolved a year later in November 2015.

Representation from Mr Francis

29.5 Mr Francis addressed the panel and stated the following:

- It was stated that intermittent noise emanated from Duke Street since 2012.
- Soundproofing had been installed from within the club while the venue was closed however there was still an issue regarding noise leakage when both sets of doors were held open simultaneously.
- It was noted that the roped entrance was removed.
- It was stated that members of the public were congregating outside the venue, smoking in the early hours, creating disturbance by fighting or shouting.
- It was stated that music played externally from the venue was played from the premises balcony often beyond 11pm.
- Concern was expressed regarding management of the venue, it was stated that door staff were unaware of nearby residents.
- It was stated that concerns could be addressed by re-introducing the rope at the east entrance, introducing a dispersal policy for customers, committing to a fixed limit to number of customers outside and mandating a prohibition on external music played from the balcony.

Questions for Mr Francis

29.6 In response to Councillor Appich, Mr Francis stated the following:

- Music played from the balcony took place at weekends between 10-11pm.
- It was stated that BHCC had confirmed that the venue had a licence to play music till 11pm, however issues arose from music playing past this time.
- It was noted that this was not a regular occurrence.

29.7 In response to Councillor Deane, Mr Francis stated the following:

- Efforts to contact the venue regarding disruption was intermittent as the main issue was largely dependant on the state of the doors.
- Reference was made to a breakdown in correspondence with Environmental Health Officers and stated that resident's efforts to follow up actions had diminished as a result of losing contact with a familiar contact.
- It was stated that the general noise created by smokers was more concerning than the number of people smoking.
- It was requested that door staff remind smokers to be quiet.

Representation from Applicant

29.8 Mr Perkins (Solicitor) addressed the panel and stated the following:

- The venue had been in operation for over 30 years, previously trading as “Havana Bar”.
- It was clarified that the venue did not trade as a nightclub.
- It was noted that extensive discussions had taken with police to mitigate any concerns.
- Reference was made to the various updated conditions that were agreed to help address any major concerns held by responsible authorities.
- The applicant acknowledged the problem of customers visiting the venue late in the evening as a source of concern in regard to potential anti-social behaviour.
- The applicant confirmed that the following issues were considered and agreed:
 - Hours of trading on Friday and Saturday would be pulled back
 - It was agreed that there would be no off sales.
 - There would be a waiter/waitress service.
 - There would be a minimum of 2 door supervisors on premises, after a threshold had been reached there would be a further 1 for every 100 thereafter.
 - The maximum cap of the venue would be 300.
 - Saving for a case of emergency, only the front doors would be used.
- It was noted that despite being within the Cumulative Impact Zone, no representations were made.
- It was further noted that there was no breach of Licensing Objectives and although conditions were tighter, they were deemed proportional.
- Reference was made to the significance of the lack of complaints since 2014/15 where, in this case, a full noise audit was conducted resulting in investment in sound measures totalling £40,000.
- It was stated that neighbours had been provided with a direct telephone number to the head of security, it was further noted that this number had not been contacted once.
- The applicant conceded that there had been rare occasions of anti-social behaviour and that this was largely a symptom of the proximity to West Street,
- It was stated that door staff were instructed to control queues
- It was further stated that efforts to contact Mr Francis had been made however had received no response until now.

29.9 Mr Behnam Samandi, the applicant, addressed the panel and stated the following:

- It was stated that the ropes outside the venue were removed due to the inconvenience caused by their proximity to tree.
- It was noted that a designated smoking area for patrons was provided in the rear of the venue.

Questions for the Applicant

29.10 In response to Mr Davis, the applicant stated the following:

- Noted the designated smoking areas and noted that security would be on premises at all times.
- Noted that they were in ownership of 3 flats which were being leased by the owner but being renter out to staff.

29.11 In response to Councillor Deane, the applicant stated the following:

- The applicant confirmed that people could not smoke in front of the building.
- It was further noted that members of public were able to sit on a public bench which was located in front of the venue.
- A more detailed overview of the layout of the venue was provided as per the plans in the agenda under Appendix D.
- It was stated that this was a hybrid application constituting both addresses 5-8 Duke Court and No 32 Duke Street.

29.12 In response to Councillor Appich, the applicant stated that the licence had lapsed in July and that the number of allowed Temporary Event Notices had been exhausted. The applicant noted that the financial consequences had been catastrophic and gave assurance that conditions and met and that obligations would be reinforced.

Summaries

29.13 The Licensing Officer addressed the panel and stated the following:

- This was an application for a new premises licence for No 32 at 32 Duke Street, Brighton Vine Street, which proposed the sale of alcohol (on and off the premises) and regulated entertainment activities from:
 - Sunday to Wednesday 8:30am – 2:00am
 - And Thursday to Saturday 8:30am – 4:00am
- Late night refreshment between
 - 11:00pm and 2:00am Sunday to Wednesday and
 - 11:00pm to 4:00am Thursday to Saturday
- The opening times proposed were:
 - 8:30am – 2:30am Sunday to Wednesday and
 - Thursday to Saturday 8:30am – 4:30am
- One representation remained outstanding
- The Council's Special Policy for Cumulative Impact stated that applications for new licences would be refused following relevant representation. The applicant could rebut this presumption of refusal if they could show that their application would have no negative cumulative impact on licensing objectives.
- 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 have given appropriate weight to:
 - The steps that were 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 panel had to consider if the applicant had demonstrated that their application would have no negative impact or whether there were exceptional circumstances to justify departing from its special policy.
- If the applicant had demonstrated that it would not impact negatively then the panel could have considered granting the application and any conditions to meet Licensing Objectives would have to be clear, precise and enforceable.

- If the panel believed the application would add negatively to the existing Cumulative Impact and the applicant had failed to demonstrate how they would counteract that negative impact then the Panel could have considered refusal. If the panel decided to refuse, it would need to demonstrate that granting would undermine a licensing objective and conditions would be ineffective in preventing problems.
- It was important to note that each application would be given individual consideration on its own merits.

29.14 Mr Davis had no further summary.

29.15 The Applicant addressed the panel and stated the following:

- This application was to replace a licence.
- The application was supported by conditions which were for shorter hours.
- The applicant assured the panel that there would be no negative impact going forward.

29.16 **RESOLVED** – That 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 circumstances of this application are unusual in that it involves re-licensing an existing premises where the licence had lapsed.

Our 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. The special policy will only be overridden in exceptional circumstances. There are no representations from the responsible authorities.

The applicant points to the special circumstances of this application and their work with the police and the fact that the resulting application is for less hours than the previous one with more stringent conditions.

The resident representation expresses concerns about noise breakout especially from the balcony after 11pm, and when the front doors are kept open. They also experience noise from customers queuing and smoking outside and noise when leaving. Conditions to address these concerns were canvassed between the panel and parties.

The panel has carefully considered the circumstances of this application within the terms of our special policy. There are in our view exceptional circumstances in this case in that these premises have been operating for many years and the licence inadvertently lapsed hence the need to a new application. This application has been drawn up in consultation with the police and is for shorter hours than the previous licence with more onerous conditions. On that basis that panel consider that there will be no additional negative cumulative impact and that there may be a reduction in such impact due to shorter hours on the licence.

The panel therefore grant the application with all the conditions agreed with the police (pages 30 to 34 of the agenda papers) and the following additional conditions to prevent public nuisance and address the concerns of the residents.

1. All external music shall be turned off by 11pm every evening.
2. Patrons of the premises wishing to smoke will be directed by door staff to the designated smoking area at the rear of the premises.
3. Door staff shall direct patrons to queue for entry from the east side of the premises.

The panel are concerned that there may have been a breakdown in communication between the management and residents and would stress the importance of maintaining a good relationship and a working phone number to keep an open line of communication.

The meeting concluded at Time Not Specified

Signed

Chair

Dated this

day of