

BEFORE THE BRIGHTON & HOVE LICENSING SUB-COMMITEE

IN THE MATTER OF AN APPLICATION FOR A NEW PREMISES LICENCE

GOSIP UNIT E 5C KNOLL BUSINESS CENTRE HOVE BN3 7GS

SKELETON ARGUMENT ON BEHALF OF THE APPLICANT

INTRODUCTION

1. The Applicant is seeking to establish a new business in Brighton and Hove providing premium drinks products to customers directly to their home and place of business.
2. The application is for an off-licence only to permit sales of alcohol via online ordering, which will then be delivered to the customers directly by the applicants, as opposed to using drivers from a third party delivery service.
3. The Applicant is seeking to licence their unit in the Knoll Business centre. The business centre has its own layby off of the Old Shoreham Road and parking spaces on-site. There is no intention to allow customers to 'click and collect' from the premises.
4. The Applicant has engaged in constructive dialogue with the Police, Environmental Protection and Licensing Authority. Addendum 1 to the licensing pack contains three conditions agreed with Emma Grant on behalf of the Environmental Protection Team that has led to her withdrawing her representation.
5. Further changes to the application have been proposed at the bottom of this Skeleton, including hours and conditions.
6. No residents or other interested parties have objected to this application. The only outstanding representations are from Sussex Police and Brighton & Hove Council licensing teams.

POLICY

7. The premises sits outside both the Special Stress Area and Cumulative Impact Zones.
8. The relevant sections can be found 3.5.4 to 3.5.7 of the policy. These sections state:

'3.5.4 The Licensing Authority and Sussex Police have specific concerns around the delivery of alcohol off the premises due to issues around the end location of 24 delivery, age verification

checks (Challenge 25), the increased possibility of the alcohol coming into the CIZ and SSA from other areas, as well as the personal safety of drivers when having to refuse a delivery at the end destination.

'3.5.5 Alcohol delivery poses a unique set of challenges as it often transfers the final age verification to a person who has no responsibility in relation to the Premises Licence which authorised the sale of alcohol. A premises licence holder needs to be satisfied that their drivers or the delivery drivers of the third-party company they chose to use, have received regular and comprehensive training in age verification and identifying persons who have consumed too much alcohol.

'3.5.6 Evidence has shown that customers have previously used landmarks/businesses not related to them as addresses for delivery so that alcohol could be consumed in open spaces/parks. The risk being that this may lead to increased crime and disorder including anti-social behaviour and criminal damage, as well as the possibility that underage persons can gain access to alcohol. Concerns have also been raised about the delivery of alcohol to known street drinking hotspots. Therefore, a condition requiring all deliveries to be to a verifiable residential or business address and a face to face ID verification is vital in mitigating some of this risk.

'3.5.7 While the Licensing Authority and Sussex Police recognise this is a growing area of business, new or variation applications to include the delivery of alcohol off the premises will be subject to increased scrutiny. Suggested conditions for the provision of an alcohol delivery service can be found at Appendix A. These are not exhaustive and each application will be considered on its own merits.'

9. In summary therefore, the main relevant policy considerations are:

- Robust age verification ensuring sales are not made to persons under 18.
- Prevention of deliveries to persons outside of their usual residential or business addresses- in particular within the CIZ or Special Stress Area.

10. The Applicant also notes the Licensing Committee's "Matrix" policy, deals predominantly with 'bricks and mortar' businesses. Whilst the sections of the policy noted above deal specifically with delivery services, the best practice conditions set out at 3.5.3 predominantly relate to bricks and mortar or 'hybrid' bricks and mortar/ online businesses. This is a specific and bespoke online business.

SUBMISSIONS

11. As is well established, “exceptional circumstances” means circumstances which allow for “an exception” to be made to the general rule: use of the words should not and does not set the bar artificially high.

12. By reference to relevant policy considerations set out above, the circumstances which the Applicant asks the sub-committee to consider are as follows:
 - a. First, it is relevant to consider that owing to the pandemic the world has changed since the CIZ policy was set (2014, revised 2018). Home delivery for all kinds of products has become a bedrock of many ‘bricks and mortar’ businesses and alcohol delivery, predominantly through third party delivery companies, has become normalised, not only during the worst of the pandemic, but continually since. There is no evidence to suggest that this will dissipate. The current conditions and policy requirements relating to traditional ‘off-licences’ may be relevant for businesses now operating a hybrid model, but consideration needs to be given to bespoke businesses setting up in this new space. As matters currently stand, traditional off-licences and supermarkets with licences that pre-date the rise in home delivery are often silent in relation to regulating this nascent industry. As such, bespoke businesses such as the Applicants can set the standards for others to follow in terms of operating practices.
 - b. The Government expansion of off-sales to all on-sales businesses and suspension of conditions accordingly (under the Business and Planning Act 2020) is due to end on 30 September 2022. However, there is still demand from people who would rather not go out to busy premises for health or societal reasons but who would like to be able to meet friends in the privacy of their own homes, maybe on the spur of the moment, perhaps later in the evening, and have be able to turn to a bespoke service such as the Applicants. There is no evidence presented to suggest how this would undermine the licensing objectives.
 - c. Currently, the significant majority of home delivery of alcohol comes either as part of a general grocery shop via supermarkets or via off-licenses that often operate to very late hours (sometimes 24 hours). However, the product ranges tend toward large international brands that does not provide a true reflection of the current market and the rise in the popularity of local and ‘craft’ products. This application ‘mirrors’ the rise in bricks and mortar craft and specialist alcohol retailers and on-licensed premises where evidence suggests that there is much less likely to be any undermining of the licensing objectives from the type of customer attracted by such businesses.
 - d. The business model of the applicant is based around premium products at premium prices. It is also designed predominantly around local producers, of which Sussex and the surrounding area is blessed with a wonderful range of beers and wines. There is a

limited range of 'standard' products on offer to cater for those who may not be quite so adventurous, but this does not diminish from the points raised above in terms of expected customer-base.

- e. The Applicant is seeking to serve customers who are looking for premium and mainly local products for consumption in their houses or places of work. Outside of orders for residents for ordinary consumption at home or for businesses putting on social events, it is anticipated that custom will either be hosting dinner parties or other social gatherings or will be hosting a few friends following a meal out in Brighton or Hove but who do not want to stay out in town or purchase 'standard' ranges from current suppliers or off-licences (if available). The Applicant is not seeking to appeal to the 'after club' crowd who are looking to 'continue the party'- hence the reduction in hours and additional proposed conditions set out below.
- f. As set out in the "Presenter" the Applicant is looking to set the 'gold standard' for home delivery businesses. This is not an 'add on' to an existing bricks and mortar business and as such the Applicant is able to ensure that the issues identified by the officers in their representations and during their meeting can be properly dealt with.
- g. The application is directed at, and answers the central concern of the CIZ policy as it relates to delivery businesses based outside of the zone:
 - i. By only delivering to legitimate home and business addresses, customers will not need to add to the cumulative impact in the area by having to go out either to drink in a pub that sells premium products (which may be some distance from where they live/work) or to find an off-licence.
 - ii. The business itself does not provide for click and collect and therefore the only alcohol being brought into the CIZ is by way of specific delivery to a specific customer in their homes or places of work.
- h. By operating electric or 'smart' vehicles, the Applicant is setting the standard for environmental deliveries within Brighton and Hove.
- i. Whilst there have been representations by the Police and Licensing Authority, the concerns raised can be addressed by appropriate conditions. In particular the Applicant is content to offer the following:
 - i. A strict condition preventing sales outside of homes or legitimate businesses. Whilst the original application would have permitted such deliveries, the Applicant has listened carefully to the Police in particular and taken into account their concerns.
 - ii. Deliveries to be made by direct employees only- not by third party delivery drivers. The manner in which the business is to be structured means that there will be no incentive to deliver if there is no proof of ID/ signs of intoxication or a suspicion that the address being given is simply to allow for delivery where the true purpose is for drinking outside. For the purposes of remunerating staff

undertaking deliveries, their pay will not be linked to having to complete a delivery.

CHANGES TO OPERATING SCHEDULE

13. Following the meeting with the Responsible Authorities noted above, the Applicant is proposing to make the following changes to the application:

- a. Reduction in hours to 10:00 until 23:00 Sunday - Wednesday, and 10:00 to 02:00 the following morning Thursday - Saturday. ***Please note that this further reduces the hours of operation from that agreed with Environmental Protection Thursday to Saturday.***
- b. Following careful thought, the Applicant is proposing amending the original operating schedule to include the following:

Agreed with EH Officer

- All deliveries will be carried out in one 0.7L Smart Car, electric car or on Electric bikes only. No other vehicles including mopeds will be used for deliveries from the premises.
- Signage will be displayed asking staff to respect the residents right to peace and quiet and to leave the area quietly
- Staff will not congregate outside the premises but will remain indoors in the waiting area while they are waiting to collect the products to be delivered.

Additional Conditions proposed following meeting with Police and Licensing Officers

- Products offered for sale will be predominantly (at least 66% by product range) local beers and wines. Spirits/ cocktails will utilise high-end branded spirits only.
- Alcohol will only be delivered to residential and business addresses. The recipient will be required to show the requisite ID to ensure that they are clearly a resident or employed at the named delivery address. Alcohol will not be delivered to customers at a park, in an open space, the beach, a bus stop etc.
- Delivery riders must be instructed to abort delivery where that sale is believed to be a "street sale" or to an open space. All such instances will be recorded in the refusals/incidents log
- Deliveries will be made by employees of the premises licence holder only. No third-party delivery companies will be engaged to make deliveries on behalf of the premises licence holder.
- There will be no collection facilities available from the premises.

- Prior to placing an order, the customer will be required to enter their date of birth as part of the purchase order. Anyone under 25 will be informed that they will need to provide ID at the time of delivery.
- Delivery will only be made to the person placing the order. Should the person accepting delivery look under 25, ID will be required prior to the delivery being made. Should no ID be provided, the delivery will not be completed and the customer will be fully refunded. The terms of this condition will be notified to the customer prior to any order payment being accepted and the customer will be required to acknowledge that they understand this term of delivery.
- No delivery will be made to a person who is deemed by the delivery person to be intoxicated. Should a person be deemed intoxicated, the delivery will not be completed and the customer will be fully refunded. The terms of this condition will be notified to the customer prior to any order payment being accepted and the customer will be required to acknowledge that they understand this term of delivery.

Remove the following conditions from the original application

- Deliveries will be made by using age verification and signed for upon delivery.
- For deliveries where the alcohol is delivered by a third party, the alcohol is concealed in a secure sealed package, and the DPS has no direct supervision or control over the delivery (such as an independent courier or Royal Mail), there cannot be an age verification challenge on delivery, but the above conditions will be followed.
- For deliveries made directly by the DPS or their employees, staff or agent or persons instructed by the DPS/PLH, the person accepting the delivery must be aged 18 years or over. Where the person accepting delivery appears to be under 25, a recognised photographic ID must be produced prior to delivery. No ID, no delivery.

Retain the following from the original application

General – all four licensing objectives

- Locations of fire safety and other safety equipment subject to change in accordance with the requirements of the responsible authorities or following a risk assessment.
- Any detail shown on the plan that is not required by the licensing plans regulations is indicative only and subject to change at any time.
- All staff shall be suitably trained for their job function for the premises the training shall be written into a programme of ongoing review and will be made available to a responsible authority on reasonable request.

The Prevention of Crime and Disorder

- There will be no members of the public permitted access to the premises.

Public Safety

- Appropriate fire safety measures will be installed and maintained as shown on the drawings accompanying this application.
- Alcohol will not be stored in such a way as to block fire or other exits from the premises.
- Any areas for which public have access to will be maintained free from obstruction and trip hazards.
- All exit routes will be kept unobstructed, with non-slippery and even surfaces, free of trip hazards and clearly signed.

The Prevention of Public Nuisance

- Noise from alcohol deliveries from the premises will not cause a public nuisance.
- Deliveries to customers who have placed orders via the company website will be limited to the hours of 10:00h and 04:00h the following morning on any day.

The Protection of Children from Harm

- The premises licence holder will have a return and refund policy for non-deliveries.
- The Premises Licence Holder shall arrange staff training in relation to underage sales. This training shall include how to seek ID in accordance with the Challenge 25 proof of age scheme. All staff training shall be documented and made available to the Responsible Authorities on request.
- Records of all customers shall be stored for a minimum period of 6 months and shall be forwarded to police or trading standards officers actively investigating allegations of underage purchases from the business.
- The age verification policy (including challenge 25) shall clearly be advertised at each stage of the order and on all advertising. All forms of advertising and promotional literature detailing the delivery service (including internet sites and flyers/leaflets) will clearly state that alcohol should only be purchased for delivery to intended recipients (or persons who will accept delivery on behalf of the named recipient) who are aged over 18. Customers will be reminded that it is a criminal offence for a person under 18 to purchase or attempt to purchase alcohol and that it is also an offence to purchase alcohol on behalf of a person aged under 18.
- At the time the order is placed a declaration will be required from the person placing the order that that person is aged over 18 years of age, and that the intended recipient is over 18 years of age. This process will be documented, (tick box before proceeding, record of

verbal acknowledgement or similar). These records must be retained for no less than twelve months and produced on request to an officer of a Responsible Authority.

CONCLUSION

14. The Applicant is seeking to build a small local business, predominantly supporting local producers. The application is both environmentally aware and conscious of the concerns raised by officers in their representations. The amended proposal with reduced hours and additional conditions strikes a proportionate balance between those concerns and being able to operate a successful business in a new and developing marketplace.

PIERS WARNE

TLT SOLICITORS

6 June 2022