

LICENSING PANEL
(Licensing Act 2003 Functions)

Agenda Item 127

Brighton & Hove City Council

Subject:	Application for a New Premises Licence under the Licensing Act 2003 for Cote, The Music Library, 115-116 Church Street, Brighton, BN1 1UE		
Applicant(s)	Cote Restaurants Limited		
Date of Meeting:	8 February 2010		
Report of:	Assistant Director Public Safety		
Contact Officer:	Name: Jim Whitelegg	Tel:	29-2438
	E-mail:	jim.whitelegg@brighton-hove.gov.uk	
Wards Affected:	St Peter's And North Laine		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 To determine an application for a New Premises Licence under the Licensing Act 2003 for Cote.

2. RECOMMENDATIONS:

- 2.1 To determine an application for a New Premises Licence under the Licensing Act 2003 for Cote.

- 2.2.1 The application is for:
A New Premises Licence under the Licensing Act 2003.

The application proposes:
The premises are a restaurant with bar facility.

- 2.2.2 Part P of the application is detailed at Appendix A and the new plan of the premises is attached at Appendix B.

- 2.3 Summary table of proposed activities.

	Proposed
F Recorded Music	Indoors Sunday – Wednesday 08:00 – 00:00 Thursday – Saturday 08:00 – 01:00 Amplified sound system playing pre recorded background music at a discreet volume. Non Standard Timings: Good Friday and Christmas Day are included within the standard timings in this part. New Years Eve all activities are permitted throughout the night until the start of permitted hours on New Years Day.
L Late Night Refreshment	Indoors Sunday – Wednesday 23:00 – 00:00 Thursday – Saturday 23:00 – 01:00 Provision for substantial hot food and hot drink at all times during the permitted hours. Non Standard Timings: Good Friday and Christmas Day are included within the standard timings in this part. New Years Eve all activities are permitted throughout the night until the start of permitted hours on New Years Day.
M Supply of Alcohol	On the Premises Sunday – Wednesday 08:00 – 00:00 Thursday – Saturday 08:00 – 01:00 Good Friday and Christmas Day are included within the standard timings in this part. New Years Eve all activities are permitted throughout the night until the start of permitted hours on New Years Day.
O Hours premises are open to public	Sunday – Wednesday 08:00 – 00:30 Thursday – Saturday 08:00 – 01:30 Good Friday and Christmas Day are included within the standard timings in this part. New Years Eve all activities are permitted throughout the night until the start of permitted hours on New Years Day.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 Cumulative Impact: The premises falls within the Cumulative Impact Area (“The Area”) in the Brighton city centre (see paragraphs Prevention of Crime and Disorder 2.4.10 – 2.4.14 and Appendices C - E).

3.2.1 **Representations received**

Details of the representations made are notified to applicants on receipt by the Licensing Authority using a pro-forma. A summary appears below:

- 3.2.2 Five representations were received. They were received from Sussex Police, local residents, a local Resident Association and a Management Company.
- 3.2.3 Representations received had concerns relating to Prevention of Crime and Disorder, Cumulative Impact, and Prevention of Public Nuisance.
- 3.2.4 A representation was received from Sussex Police which included conditions relating to the Prevention of Crime and Disorder. Their representation was withdraw as the applicant agreed to the conditions and amended the operating schedule accordingly.
- 3.2.5 Full details of the representations and the agreement are attached at Appendix F. A map detailing the addresses of the persons who have submitted the representations and their location in relation to the premises is attached at Appendix G.

Please note Relevant authorities are not included.

4. **CONSULTATION**

Commentary on licensing policy

- 4.1 The following extracts from Brighton & Hove Licensing Policy are considered relevant to this application and numbered as they appear in the policy:

General

- 1.2 The licensing objectives are:-
 - (a) Prevention of crime and disorder;
 - (b) Public safety;
 - (c) Prevention of public nuisance;
 - (d) Protection of children from harm.
- 1.3 Licensing is about regulating licensable activities on licensed premises, by qualifying clubs and at temporary events. Any conditions attached to various authorisations will be focussed on matters which are in the control of individual licensees and others with relevant authorisations, i.e. the premises and its vicinity.
- 1.5 Each application will be given individual consideration on its merit. Nothing in this policy shall undermine the right of any

individual to apply under the terms of the Act for a variety of permissions and to have any such application considered on its individual merits. Similarly, nothing in this policy shall override the right of any person to make representations on an application or seek a review of a licence or certificate where provision has been made for them to do so in the Act.

- 1.15 Licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned. Licensing is about the control of licensed premises, qualifying clubs and temporary events within the terms of the Act, and the conditions attached to licences, certificates and permissions will be focused on matters which are within the control of the licensee and will centre on the premises themselves and their immediate vicinity. When considering these terms and conditions the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned.

In respect of the prevention of crime and disorder

- 2.2 The licensing authority acknowledges that training and good management play a key part in preventing alcohol and drug related crime. The authority recommends that all licensees of on-licensed premises attend training programmes which will raise their awareness of the issues relating to drugs and violence in licensed premises, and that suitable training be extended to all bar staff and door staff so that drug dealers and users will be deterred from using licensed premises for illegal purposes and that incidents of violence in licensed premises will be reduced. Licensees are also encouraged to attend training programmes to help identify children at risk and issues of basic child protection.
- 2.3 It is expected that the designated premises supervisor (DPS) will spend a significant amount of time on the premises. When not on the premises it will be essential that the DPS is contactable, particularly should problems arise with the premises.
- 2.4 Cumulative impact – the licensing authority may receive representations from either a responsible authority or an interested party that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives. This should not, however, be confused with ‘need’ which relates more to the commercial demand for a particular type of premises. The issue of ‘need’ is therefore a matter for the market to decide and can, in some circumstances, be a matter

for planning consideration; need therefore does not form part of this licensing policy statement.

- 2.4.1 Special Policy - Cumulative Impact is defined as the potential impact upon the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area.
- 2.4.2 The licensing authority after careful consideration has determined that the concentration of licensed premises in a small area of the city centre is causing problems of crime and disorder and public nuisance, and that therefore an approach to Cumulative Impact is necessary as part of its statement of licensing policy. This special policy was adopted for inclusion within the statement of licensing policy by Council on 13 March 2008.
- 2.4.3 This special policy will refer to a Cumulative Impact area (“the Area”) in the Brighton city centre, a detailed plan of which is attached at **Appendix C** of the Statement of Licensing Policy (SoLP).
- 2.4.4 The effect of this special policy is that applications for new premises licences or club premises certificates within the Area, or variations which are likely to add to the existing Cumulative Impact, will normally 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.
- 2.4.5 Any variation application will potentially come within this special policy, including those for extensions of hours, subject always to an applicant satisfying the authority that there will be no adverse effect on Cumulative Impact.
- 2.4.6 This special policy also applies to all new premises licences and club premises certificates, for example pubs, off-licences, restaurants and take-away establishments.
- 2.4.7 The presumption of refusal does not relieve responsible authorities or interested parties of the need to make a relevant representation. If there are no representations the licensing authority must grant the application in terms consistent with the operating schedule submitted.
- 2.4.8 Furthermore, 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 it is justified in 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 the Area, it may be granted. 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 or theatre may not.

- 2.4.9 If the licensing authority decides that an application should be refused, it will still need to show that the grant of the application would undermine the promotion of one of the licensing objectives and that conditions would be ineffective in preventing the problems involved.
- 2.4.10 Special Stress Areas – **Appendix D** of the SoLP details two areas of the Brighton city centre which border the Cumulative Impact area at **Appendix C** and which are deemed areas of special concern in terms of the levels of crime and disorder and public nuisance experienced within them.
- 2.4.11 While it is not considered appropriate at this stage to include these areas within the main impact area as such, these Special Stress Areas (SSAs) are of concern to the licensing authority because of the relatively high levels of crime and disorder and nuisance experienced.
- 2.4.12 New and varied applications for premises and club premises certificates within SSAs 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. **Appendix E** of the SoLP sets out a list of potential measures the licensing authority considers may be appropriate. These may be more or less appropriate depending upon the style of operation applied for.
- 2.4.13 On receipt of any application in SSAs, where a relevant representation has been made, the licensing authority will scrutinise the application carefully and will look at the measures proposed in the operating schedules and compare them to the measures set out in **Appendix E**. Where discretion has been engaged, those applications which fall short may be refused or conditions applied to comply with policy measures.
- 2.4.14 The Licensing Authority will keep the Cumulative Impact Area and Special Stress Areas under review. Should the authority find that problems of crime and disorder or nuisance are not improving, or are worsening; the Special Policy will be reviewed with a view to bringing the SSAs into the Cumulative Impact Area. If it is found that the above problems are receding the Special Policy may be reviewed with a view to revising the areas' boundaries.

2.5.1 Diversity of premises

This attempts to ensure that there is a mix of the different types of licensed premises, particularly in areas where there is a high density of such premises. It will provide resilience against changing trends and attract a more diverse range of customers from different age groups, different communities of interest and with different attitudes to alcohol consumption. It gives potential for positively changing the ambience of the city or an area of it. This in turn may have a positive effect in reducing people's fear of crime and in increasing the number of evening visitors to the city centre. The Community Safety Strategy recognises that too many single uses in a confined area and patrons turning out onto the streets at the same time, may create opportunities for violent crime and public disorder and therefore encourages mixed use venues, varying hours of business and a wider age balance.

2.5.2 Café Bars

The licensing authority may be prepared to look favourably upon an application for the grant of a licence, subject to the following conditions that will prevent the premises becoming a public house.

- The sale of intoxicating liquor and other beverages shall be waiter /waitress service for consumption by persons seated at tables.
- Substantial food shall be available at all times.
Licensees should be aware that breach of these conditions is likely to lead to proceedings for revocation of the licence.

2.5.3 Restaurants with outside service

The licensing authority will also consider applications from restaurants that request to serve alcohol to areas adjacent to or immediately outside their premises. In addition to the above conditions for café bars, the licensing authority will require evidence that the applicants have an agreement with the local authority to use the area as defined on a plan provided. The following condition will also apply: -

The sale and supply of alcohol for consumption off the premises shall be restricted to an area licensed by the Local Authority for use of the public highway as shown on the plan deposited and such area shall be defined by a physical barrier acceptable to the licensing authority.

2.5.4 Geographical spread

Spreading the siting of large venues (those with a capacity in excess of 250 people) across the city reduces the problems of dispersing large numbers of people leaving premises in close

proximity at the same time. Taxi and bus queues can be flash points for public disorder and violence. A good geographical spread coupled with increased taxi ranks and bus stops near venues reduces waiting time and the potential for crime and disorder.

2.5.5 Care, control and supervision of premises

The effective management and supervision of a venue is a key factor in reducing crime and disorder, both within it and outside. The Police will consider the applicants, objecting to the application where appropriate. The Police will suggest crime prevention measures in relation to, for example, the internal layout of the premises, close circuit television, help points, lighting and security staff. The Police may ask for conditions which support such measures to be imposed when planning or licensing applications are granted, e.g. type of licence, capacity, opening time restrictions.

2.8 Enforcement issues will be considered in the light of any relevant enforcement policies and close links will be sought between all enforcing authorities, e.g. through the use of intelligence sharing and strategy groups. Such protocols may lead to the targeting of agreed high risk and problem premises whilst permitting a lighter touch approach in respect of well run premises.

2.9.1 In order to support local crime prevention strategies, applications for regulated entertainment such as performance of dance, not necessarily unlawful, for the purpose of sexual stimulation of persons admitted to the premises, including exposure of breasts, genitals, urinary or excretory organs during entertainment will be carefully scrutinised and regard will be had to the following.

In respect of the prevention of public nuisance

4.1 In determining applications for new and varied licences, regard will be had to the location of premises, the type and construction of the building and the likelihood of nuisance and disturbance to the amenity of nearby residents by reason of noise from within the premises, or as a result of people entering or leaving the premises or from individuals or groups of customers gathered outside (e.g. in order to smoke).

4.3 Applications for new licences or for the extension in size of licensed premises should not normally be granted if the premises will use amplified or live music and operate within or abutting premises containing residential accommodation except that occupied by staff of the licensed premises. A condition may be imposed on new licences that entertainment noise shall be inaudible in any residence.

- 4.4 Installation of sound limiting equipment and sound insulation may be required to minimise disturbance to the amenity of nearby residents by reason of noise from the licensed premises.
- 4.5 Staggered closing times will not be used to combat binge drinking disorder and antisocial behaviour. Zoning will be avoided. A general principle of later opening so that customers can leave for natural reasons, slowly over longer periods will be promoted, to prevent unnatural concentrations of people. The location of violent attacks, anti-social behaviour and hate crime or related incidents may be used to justify closing times.
- 4.7 In determining applications for new licences or extensions in hours or terminal hours of licensed premises, regard will be had to late night public transport availability and location of taxi ranks to aid dispersal of customers.
- 4.8 Regard will be had to any history or likelihood of nuisance. Generally, favourable consideration will be given to applications for later hours in the city centre and on busy main roads. Powers may be exercised to impose conditions as to hours of opening in order to avoid unreasonable disturbance to residents of the neighbourhood.

Strategic Integration

- 6.5 Specific conditions may be attached to premises licences to reflect local crime prevention strategies. Such conditions may include the use of closed circuit television cameras, the provision and use of shatterproof drinking receptacles, drugs and weapons search policy, the use of registered door supervisors, specialised lighting requirements, hours of opening.
- 6.7 This policy avoids duplication with other regulatory regimes wherever possible.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

The licensing Act 2003 provides for fees to be payable to the licensing authority in respect of the discharge of their functions. The fee levels are set centrally at a level to allow licensing authorities to fully recover the costs of administration, inspection and enforcement of the regime.

Finance Officer Consulted: Karen Brookshaw Date: 19.01.2010

5.2 Legal Implications:

The licensing authority must act to promote the four licensing objectives which are:

- The prevention of crime and disorder.
- Public safety.
- The prevention of public nuisance.
- The protection of children from harm.

The licensing authority must have regard to its statement of licensing policy and the guidance issued by the Secretary of State in carrying out its functions.

Lawyer Consulted: Rebecca Sidell

Date: 19.01.2010

5.3 Equalities Implications:

Diversity is valued and strong, safe communities are vital to future prosperity. Licensing policy aims to protect children from harm including sale and supply of alcohol to children.

5.4 Sustainability Implications:

Licensing policy aims to prevent public nuisance and develop culture of live music, dancing and theatre.

5.5 Crime & Disorder Implications:

Licensing policy aims to prevent crime and disorder and protect public safety.

5.6 Risk and Opportunity Management Implications:

Licensing is a crucial business and employment opportunity and unnecessary regulation might lead to legal challenge.

5.7 Corporate / Citywide Implications:

The success of the city's tourism strategy requires a safe, attractive city centre to improve competitiveness. The Act may significantly change night time economy.

SUPPORTING DOCUMENTATION

Appendices:

1. Appendix A – Part P of the Application
2. Appendix B – New Plan of Premises
3. Appendix C – Brighton & Hove City Council – Cumulative Impact Area
4. Appendix D – Brighton & Hove City Council – Special Stress Area
5. Appendix E – Measures to be considered in SSA's
6. Appendix F - Representations and agreement
7. Appendix G – Map of area

Documents in Members' Rooms:

1. Environmental Health & Licensing Service, Brighton & Hove City Council (2008): The Licensing Act 2003 – Brighton & Hove City Council: Statement of Licensing Policy

Background Documents:

1. Environmental Health & Licensing Service, Brighton & Hove City Council (2008): The Licensing Act 2003 – Brighton & Hove City Council Statement on Licensing Policy.

