

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

10.00am 26 JANUARY 2009

COUNCIL CHAMBER, BRIGHTON TOWN HALL

MINUTES

Present: Councillor Lepper (Chairman); Hyde and Marsh

Officers: Jean Cranford (Licensing Manager), Rebecca Sidell (Lawyer) and Jane Clarke (Democratic Services Officer)

PART ONE

93. TO APPOINT A CHAIRMAN FOR THE MEETING

93.1 Councillor Lepper was appointed Chairman for the meeting.

94. PROCEDURAL BUSINESS

94a. Declaration of Substitutes

94.1 There were none.

94b. Declarations of Interest

94.2 There were none.

94c. Exclusion of the Press and Public

94.3 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 100(1) of the Act).

RESOLVED – that the press and public be not excluded.

95. SEA VIEW CONVENIENCE STORE, 41 KINGS ROAD, BRIGHTON

- 95.1 The Panel considered a report of the Assistant Director of Public Safety regarding an application for a new premises licence under the Licensing Act 2003 for Sea View Convenience Store, 41 King's Road, Brighton.
- 95.2 Mr Shakir, the applicant and Mr Deacon, solicitor for the applicant, attended the hearing to make representations in favour of the application. Mr Pol, on behalf of the Ship Street/Middle Street Residents' Association and Mr Simmonds, on behalf of several local business objectors, attended the hearing to make representations against the application. Inspector Harris, Sussex Police and Mr Lucy, solicitor for Sussex Police also attended the hearing to make representations against the application.
- 95.3 The applicant's solicitor made an application for an adjournment on the basis that he had recently been instructed. The applicant's solicitor did acknowledge that he was prepared to proceed if necessary. The Panel considered the application, but felt in the circumstances there was no basis for an adjournment as all the relevant notices had been sent out and all parties were present and ready to proceed.
- 95.4 The Licensing Manager summarised the application as set out in the report and highlighted that this was for a 24 hour alcohol licence and several objections had been received. The Licensing Manager referred the Panel Members to the Statement of Licensing Policy and noted that the application was within the Cumulative Impact Area where applications would normally be refused unless the applicant could show that the application would have no negative cumulative impact.
- 95.5 Inspector Harris from Sussex Police began her representation by stating that the premises was situated in a tourist area where a high number of families used the facilities regularly. It was already an area with a large concentration of late-night licensed premises and Sussex Police had set up a special task force to deal with the alcohol-related anti-social behaviour caused by this. There were secondary police teams also dealing with beggars and street drinkers, and the particular problems associated with high levels of tourist, including glass, litter and bonfires being left on the beach.

Inspector Harris felt strongly that another licensed premises in the area would create a negative cumulative impact. She felt that the conditions proposed on the licence were not tailored to the special circumstances of the area, there were no conditions to deal with the numerous special events that occurred in Brighton and Hove, the layout was inappropriate and no consideration had been given to deterring people from stealing alcohol from the shop.

Inspector Harris stated that the problems in this area were experienced both day and night, with a high proportion of incidents occurring in the afternoon. She felt that restricting the hours of the licence would not be effective in mitigating any negative impact it might create. Therefore she was requesting that the Panel refuse the application for an alcohol licence at this premises.

- 95.6 Mr Deacon, solicitor for the applicant, asked if most of the problems in this area happened in the middle of the night and Inspector Harris replied that in her experience this was not true and that incidents occurred regularly both day and night.
- 95.7 Mr Deacon asked if the basis for most of the objections to this application referred to problems caused at night and Inspector Harris replied that she did not know the basis of other people's objections, but as far as the Police were concerned problems were experienced both day and night in this area, with police initiatives in place 24 hours a day.
- 95.8 Mr Deacon asked if reducing the hours of the licence would reduce the impact of the application. Inspector Harris replied that due to the nature of the problems experienced in this area, she felt that any additional licensed premises would create a negative cumulative impact.
- 95.9 Mr Deacon asked if the Police would still object to the application if the premises was situated outside of the Cumulative Impact Area. Inspector Harris replied that there were other problems with the application, including an unsatisfactory internal lay-out and as such she felt that the Police would still object to the licence being granted regardless of where it was situated.
- 95.10 Mr Simmonds then began his representation on behalf of local business owners and stated that their objections were from a range of different businesses and not based on need. He noted that the area was small, busy and dense with a high volume of licensed premises that already created unique anti-social problems in the vicinity. The application was limited in terms of the conditions it offered to deal with these problems and as such would cause a negative impact.

Mr Simmonds stated that other licensed premises in the area had very high security measures because of the problems that had been experienced, there was an off-licence nearby that did not open to the full extent of their entitlement in an attempt to alleviate some of the problems and other businesses that were not associated with the alcohol trade were affected by anti-social behaviour from a high concentration of vagrants and street-drinkers. The conditions offered on the application to deal with these problems were not nearly stringent enough and therefore the application would not uphold or promote the four licensing objectives. On this basis, Mr Simmonds felt that the application should be refused.

- 95.11 Mr Deacon asked whether the objectors who Mr Simmonds represented were licensed premises. Mr Simmonds replied that he was representing a variety of businesses, which also included licensed premises. He noted that these businesses had included additional conditions on their licences and did not use their licences to the full extent that they were allowed in order to deal with the problems of the area.
- 95.12 Mr Deacon asked if restricting the hours of the application would help alleviate any impact that might be felt and Mr Simmonds replied that in his opinion the hours needed to be reduced, the layout of the shop needed to be changed and extra conditions needed to be added to deal with the particular problems in this area and uphold the licensing objectives.

- 95.13 Mr Pol, representing the Ship Street/Middle Street Residents' Association, began his representation by stating that this area was already saturated with licensed premises. There were several problems associated with this and Mr Pol stated that on Friday and Saturday nights the streets were filled with people drinking alcohol. He felt that another 24 hour licensed premises being granted in this area would result in people from the bars and clubs buying cheaper alcohol from this out-let to drink on the streets which would create even more anti-social problems for the residents. As such he felt the application should be refused.
- 95.14 Mr Deacon asked if restricted hours would help alleviate the concerns Mr Pol had raised. Mr Pol replied that residents also experienced problems in the early morning between 06.30 and 08.30 with street drinkers and beggars causing problems due to excessive drinking.
- 95.15 Mr Deacon asked why Mr Pol felt that people would leave an on-licensed establishment just to buy more alcohol in an off-licensed establishment and Mr Pol felt that as the alcohol would be cheaper in the off-licence this would encourage people to buy and drink even more in the area than they already did.
- 95.16 Mr Shakir, the applicant, then began his representation by stating that he would be happy to change the interior layout of the shop to ensure that alcohol could not be stolen, although he felt that the premises was small enough that this was unlikely to happen. He stated that he was in consultation with a security company who were willing to provide SIA trained door staff on Friday and Saturday nights and a mobile support service at all other times. Mr Shakir was also willing to suspend the sale of beer and cider above a specified Alcohol per Volume (APV) level and would not advertise cheap alcohol or offers in the windows of the premises.
- Mr Shakir felt that the complaints that had been received related to other premises and felt it would be unfair to judge his premises in the same way. He stated that he would uphold and respect the four licensing objectives if this application was granted and would be willing to reduce the opening hours of the establishment if that would alleviate the concerns of residents and Panel Members. He noted that there was an opportunity for review should his establishment cause problems related to alcohol sales, but he felt that this would not be likely. Mr Shakir stated that he was a responsible and law-abiding person and would introduce any recommended conditions the Panel sought to place on the licence.
- 95.17 Mr Pearson from Washington State Security Systems addressed the Panel on Mr Shakir's behalf and stated that in his experience it was the night-time economy that caused most of the anti-social behaviour problems in the area. He felt that it was very rare for people to create problems outside off-licensed premises and even if such problems occurred for Mr Shakir, there would be licensed door staff to deal with this provided by his company.
- 95.18 The Chairman asked for clarification on when the door staff would be present and Mr Shakir replied that he was willing to hire staff from midnight until 04:00 on Thursday, Friday and Saturday nights.

- 95.19 A Panel Member asked what the current opening hours of the convenience store were and why Mr Shakir wanted an alcohol licence. Mr Shakir replied that he was currently open as a convenience store until 03:00 and wanted to sell alcohol to the tourist trade. He noted there were many hotels in the area and tourists would often come to the convenience store to buy alcohol because they did not want to buy it in the hotel. Mr Shakir felt it would be beneficial to his business in these difficult economic times.
- 95.20 A Panel Member asked how the shop would be arranged to prevent young people from stealing alcohol. Mr Shakir replied that the alcohol would be kept behind the counter, in a fridge and on high shelves which would prevent people from taking alcohol. He also stated that the premises was very small and there would be two staff on at night.
- 95.21 Mr Lucy asked if this was Mr Shakir's first Premises Licence application and he confirmed that it was. Mr Lucy went on to ask if Mr Shakir was aware of the particular problems an off-licensed premises would create in this area. Mr Shakir stated that he did not feel that his premises would be causing problems and that the problems already in existence in the area were created by other premises selling alcohol.
- 95.22 Mr Lucy asked why none of the measures that Mr Shakir had proposed today were part of the licence application. The advice Mr Shakir had been given was inaccurate and he had applied for a licence without these conditions. Mr Shakir felt that he had been represented badly in this issue by previous solicitors and had since changed solicitors because of this and was now happy to include any conditions necessary in the licence application to ensure the licensing objectives would be upheld.
- 95.23 Mr Lucy asked if Mr Shakir was aware of the Cumulative Impact policy and Mr Shakir confirmed that he was but that he felt his store would create no negative cumulative impact.
- 95.24 The Licensing Manager then gave her final submission and reminded the Panel that economic need was not a valid licensing consideration. If they were minded to grant the application the Panel needed to be sure it would not cause a negative cumulative impact, and if they were minded to refuse the application, they needed to give valid reasons as to why conditions would not be effective in managing the impact of this application.
- 95.25 Mr Pol gave his final submission and stated that granting another premises licence in this area would be inappropriate and would detrimentally impact the Cumulative Impact Area.
- 95.26 Mr Simmonds stated that the applicant had not demonstrated that conditions would be effective in reducing the negative impact on the area and as such the four licensing objectives would not be upheld if this application was granted.
- 95.27 Mr Lucy stated that the applicant had been given a number of opportunities by Sussex Police to discuss the application and suggested conditions with them, but had not done so. There were no suggested conditions for dealing with large tourist events in the city and the internal layout was still unsatisfactory. As such the Police were objecting to this application.

95.28 Mr Deacon gave his final submission on behalf of Mr Shakir and stated that the applicant had offered restricted hours, restrictions on the sale of high strength alcohol, a contract with a reputable security company, CCTV installed inside the premises and rearrangement of the internal layout, to ensure that the four licensing objectives were upheld. He stated that Mr Shakir understood the Cumulative Impact policy and had taken specific steps to address these problems and in his opinion, the store would not create a negative impact on the area. He asked the Panel Members to grant the application.

95.29 **RESOLVED** – that the application be refused for the following reason:

“The panel decided to reject the application. They felt that the applicant had failed to demonstrate that his application would not add to the negative cumulative impact in this area. Therefore the panel believed that the four licensing objectives would be compromised. They did not consider that placing conditions on the licence would ameliorate the concerns expressed by the police and the interested parties.”

96. CAPS AND SARASOTA, 5-6 WESTERN ROAD, HOVE

96.1 The Panel considered a report of the Assistant Director of Public Safety regarding an application for a variation of a premises licence under the Licensing Act 2003 for Caps and Sarasota, 5-6 Western Road, Hove.

96.2 Mr Simmonds, on behalf of the applicant, attended the hearing to make representations in favour of the application. Mr Deacon, an objector, attended the hearing to make representations against the application.

96.3 The Licensing Manager summarised the application as set out in the report and highlighted that the application was to vary the hours of the licence. She stated that the premises was within the Special Stress Area and so any application had to be considered with the implications of this in mind. There was some history of problems in the area with the last complaint being received in 2003.

96.4 Mr Simmonds asked if the Licensing Manager was aware that a Provisional Entertainment Licence had been successfully applied for at this premises, and the Licensing Manager confirmed that she was.

96.5 Mr Deacon then began his representation and stated that his main concern was about the impact of noise on his business, which was situated next door to the premises. He was unsure why the bar needed to open for live entertainment at 10:00 and felt that this could disturb his offices if allowed. Mr Deacon stated that he was not concerned about an alcohol licence being granted for this premises.

96.6 A Panel Member asked whether he had heard any noise emanating from the basement club and Mr Deacon replied that he had not, but that the premises was not open for business yet.

96.7 Mr Simmonds showed Mr Deacon a copy of a letter to the Health, Safety and Licensing Department at Brighton & Hove City Council, which listed a number of conditions that the applicant had agreed to in terms of controlling sound levels at the premises. Mr

Simmonds asked if these conditions would help to alleviate his concerns and Mr Deacon replied that they would.

96.8 Mr Simmonds then began his representation on behalf of the applicant and stated that the business had been established in this location for many years. The business had operated as a nightclub in the basement and a restaurant on the upper floors in the past, which was the situation until 2005 when the business closed. The premises had now been refurbished and the applicant was applying for a variation of the existing licence to allow for a nightclub venue to be run in the basement and a café/bar style operation to be run on the ground and first floors, but without café/bar conditions.

Mr Simmonds stated that extensive sound insulation had been installed and that several conditions had been agreed with the Environmental Health Officer to ensure that noise problems would not be an issue. He noted that the rear alleyway would be lit and CCTV was being installed. He felt that the area would be improved because of this by encouraging street drinkers and beggars to move on. Mr Simmonds noted that the Police had withdrawn their objection because the applicant had agreed to suitable conditions to ensure that the licensing objectives were upheld.

96.9 A Panel Member asked where smokers from the premises went currently and Mr Simmonds replied that they used an alley along the side of the premises. This was now covered by CCTV which Mr Simmonds felt would prevent any problems arising.

96.10 Mr Deacon asked if the ground floor was to be primarily used as a café/bar style area and Mr Simmonds agreed, although highlighted that the applicant was not proposing café/bar style conditions to ensure the area could be used flexibly.

96.11 Mr Deacon asked if sound insulation had been installed and Mr Simmonds replied that both the basement and ground floor had been insulated for sound and highlighted that this was especially important to the applicants as they currently lived above the premises.

96.12 The Licensing Manager made her final submission and highlighted that premises do not have to open for the full length of hours permitted on their licence and that paragraph 4.2 of the Statement of Licensing Policy stated that the amenity of nearby residents needed to be considered in terms of noise disturbance as a result of people entering and leaving the premises and from individuals or groups of customers gathering outside the premises when determining an application.

96.13 Mr Deacon made his final submission and stated that his main concern with the application was the potential for noise nuisance that could be created. He asked the Panel to take this into consideration when determining the application.

96.14 Mr Simmonds made his final submission on behalf of the applicants and stated that this application would rationalise the existing licence on the premises, making it easier to operate for the applicants, and easier to monitor for residents and the Licensing Authority. He stated that the Police had not objected to this application and felt that the extra conditions the applicants had agreed to would alleviate the concerns expressed by Mr Deacon.

96.15 **RESOLVED** – that the application for a Variation of a Premises Licence is granted for the following reason:

“The panel decided to grant the variation application. They felt that the conditions agreed between the applicant and the police and those agreed with the environmental health department (see below) in addition to those in the operating schedule, would answer the concerns expressed in relation to noise and meet the licensing objectives.”

1. The front doors and windows on the ground floor must be kept shut when any regulated entertainment is being performed except for entry and exit.
2. No drinks are to be taken outside between 23:00 and 10:00.
3. All Live and Recorded music to be controlled via noise limiting devices and these are to be set at levels agreed by the Licensing Authority.
4. At any time the basement is open from 22:00 onwards then a minimum of one Door Supervisor shall be on duty with the responsibility of controlling the entrance to the Basement and at any time on a Friday, Saturday or Sunday of a Bank Holiday Weekend when the Ground Floor venue is open, than from 22:00 hours an additional Door Supervisor with the sole responsibility of controlling entrance to the Ground Floor will also come on duty. Both Door Supervisors or their replacements will remain on duty until their particular venue closes to the public, but if both venues are open after 22:00 on a Friday, Saturday or Sunday of a Bank Holiday Weekend then one additional Door Supervisor [thus a minimum of three Door Supervisors after 22:00 when both floors are open] will always be employed, and at all times when either venue is open then a risk assessment will be carried out by the DPS or other responsible person and Door Supervisors additional to the stated minimum requirements will be employed based on that risk assessment and with specific roles to either one or both venues as is required.

97. THE FOUNTAIN HEAD, 102 NORTH ROAD, BRIGHTON

- 97.1 The Panel considered a report of the Assistant Director of Public Safety regarding an application for a variation of a premises licence under the Licensing Act 2003 for The Fountain Head, 102 North Road, Brighton.
- 97.2 Mr Perkins, solicitor to the applicant and Mr Bennet, Estates Officer for the Fountain Head, attended the hearing to speak on behalf of the applicant in favour of the application and Mr Skam, Mrs Chandler, Mrs Powell and Councillor I Davey as Ward Councillor came to speak against the application.
- 97.3 The Licensing Manager began by stating that this was an application to vary the existing licence to include an extension. Additional papers had been received from the applicant's solicitor stating that there had been an error in the original application and clarifying that they were not requesting additional hours on the licence. There had been letters of representation received from residents regarding issues of public safety and public nuisance. There was very little history in terms of complaints for this premises.

97.4 Councillor Davey began his representation by stating that since the Fountain Head had opened 2 years previously the local neighbours had suffered disturbance from noise and anti-social behaviour in the area. He noted that despite being in the heart of the city, the premises was situated in a mainly residential area and the pavement was regularly blocked by crowds of people standing outside to drink and smoke. He stated that the residents were able to hear noise from inside the pub in their living rooms and an extension of the premises would only create a greater noise nuisance for these residents.

Councillor Davey stated that the premises was in a Special Stress Area and this needed to be taken into account when approving new or varied licences. The conditions proposed on the application would not ensure that the four licensing objectives were upheld, but if the Panel were minded to grant the variation, Councillor Davey asked that extra conditions be added to the licence to include closing the outside area of the premises by 22:00, closing the access/egress on to Cheltenham Place by 22:00 and ensuring that the windows and doors to the premises were closed at all times.

97.5 Mr Perkins, on behalf of the applicant asked Councillor Davey if he was aware of how big the extension of the premises would be, and Councillor Davey replied that he was not. Mr Perkins stated that it would be an increase of no more than 20% of the floor area and asked if Councillor Davey felt this constituted a large increase. Councillor Davey felt that it could be.

97.6 Mrs Chandler then began her representation by stating that the pavements around the premises were frequently blocked with customers talking and smoking and this resulted in pedestrians having to use the road to pass the premises. She felt that the area could not accommodate an additional 20% increase in customers to the premises and stated that the noise disturbance the residents currently suffered would be made worse if this application was granted. There had been refuse problems created by the premises and Mrs Chandler felt there had been no attempt to consult and work with local residents to ensure they were not adversely affected by the activities of the premises.

97.7 A Panel Member asked if an Environmental Health Officer had attended to check the noise levels in the area and Mrs Chandler replied that they had, and since the visit the music could no longer be heard unless the doors and windows were open.

97.8 A Panel Member asked how many additional people Mrs Chandler thought would attend the premises with a 20% increase in floor space and Mrs Chandler stated that she felt it would create a significant impact. She estimated that there were already 30 to 40 people outside the premises on a busy evening and any increase in numbers would be intolerable.

97.9 Mrs Powell then began her representation and stated that she was objecting on the grounds of the four licensing objectives. She felt that increasing the capacity of the premises would have no benefit to the community and that the residents already suffered from anti-social behaviour problems, which would increase if the variation was allowed. She noted that this was a Special Stress Area and felt that this needed to be taken into account when determining the application.

97.10 Mr Perkins then began his representation on behalf of the applicants and stated that the applicants had purchased the adjoining property to extend the business in order to create a more comfortable environment for their current clientele. He stated that the increased space would provide for probably not more than 20 additional persons as a large proportion of the extension would be given over to increased kitchen space.

Mr Perkins noted that the premises was not by nature a late-night establishment and the majority of trade was conducted in the early evening. The applicants generally played music at background levels only and the varied application would have no overall effect on how the business was run. He stated that the applicants were aware that the premises was located in a Special Stress Area and had included conditions on the licence to address this. Mr Perkins finally noted that in his applicant's view, Cheltenham Place was a route to and from the town centre for many people and their premises was being unfairly blamed for anti-social behaviour caused by these people when they passed through the area.

97.11 A Panel Member asked what the total capacity of the premises would be and Mr Bennet, Estates Manager to the Fountain Head, replied that it would be a total of 120 people at the most, although the premises would rarely be full to capacity.

97.12 A Panel Member noted that there were several people using the outside area of the premises already and asked how an increase in customers would affect this. Mr Bennet replied that this area was strictly controlled by staff and only 30 people were allowed seated outside at any one time. This would continue if the variation was granted.

97.13 A Panel Member asked how many entrances were located on Cheltenham Place and how these entrances were monitored and Mr Bennet replied that there were two entrances and door staff were employed on Friday and Saturday nights to help control any crowds around these entrances.

97.14 The Licensing Manager gave her final submission and stated that the premises was in a Special Stress Area and further monitoring of the premises could be required to ensure the licensing objectives were being upheld. She stated that statutory noise nuisances could be dealt with via Noise Abatement Notices rather than licensing conditions.

97.15 Councillor Davey began his final submission by stating that this was the largest pub in the North Laine area and in his opinion the outside area was not closely monitored. He felt that it was not acceptable for pavements to be blocked by customers and asked that if the variation was granted, more stringent conditions be placed on the licence to ensure that the residents did not suffer any further noise disturbance or anti-social behaviour.

97.16 Mrs Chandler began her final submission by stating that there had been no disturbance in the area before the pub had opened and that smokers standing outside the premises created even more problems since the smoking ban had been initiated.

97.17 Mr Perkins then gave his final submission by highlighting that this was a small extension to the premises and a nominal increase in customers. He felt that the external area was properly controlled and closed by 23:00. The extension was to create a better environment for current customers and to provide space to prepare more hot food.

97.18 **RESOLVED** – that the application for a variation of a premises licence be granted for the following reason:

The panel decided to grant the variation application. They were mindful that the premises were in a special stress area. The application would mean an increase of 20% floor space and an increase in customers. They were concerned about the possibility of additional noise outside the premises but believed that the existing conditions on the licence if adhered to would ameliorate these concerns and stated they expected the premises to comply with these. The panel reminded residents that if there was a breach of the conditions or noise nuisance from the premises then this could lead to a review of the licence.

The meeting concluded at 2.15pm

Signed

Chair

Dated this

day of