

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

10.00am 4 AUGUST 2011

COMMITTEE ROOM 1, HOVE TOWN HALL

MINUTES

Present: Councillors : Cobb (Chair), Gilbey and Marsh

Officers: Sarah Cornell, Licensing Officer; Sarah Jane McNaught, Licensing Officer, Simon Court , Lawyer and Penny Jennings, Democratic Services Officer

PART ONE

50. TO APPOINT A CHAIRMAN FOR THE MEETING

Before proceeding to the formal business of the meeting the Legal Adviser to the Panel, Mr Court explained that the Panel would be considering two licensing matters that morning which were captured by different legislation. Although comprising the same membership members would in effect be sitting as two separate Panel's. One Panel would be considering a licensing application under the Licensing Act 2003. The second would be dealing with revocation of a Street Trading Consent, Zone B, under the local Government (Miscellaneous Provisions) Act 1982.

50.1 Councillor Cobb was appointed Chairman for the meeting.

51. PROCEDURAL BUSINESS

51a Declaration of Substitutes

51.1 There were none.

51b Declarations of Interest

51.2 There were none.

51c Exclusion of the Press and Public

51.3 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).

51.4 **RESOLVED** - That the press and public be not excluded / excluded from the meeting during consideration of Item X onwards.

52. APPLICATION FOR A NEW PREMISES LICENCE: PERFECT KEBAB & CHICKEN, 2 YORK PLACE, BRIGHTON

52.1 The Panel considered a report of the Head of Planning and Public Protection requesting that they determine a new premises licence application under the Licensing Act 2003 received in respect of Perfect Kebab and Chicken, 2 York Place, Brighton.

52.2 Mrs Irving, Area Licensing Manager and Inspector Apps were present representing the Police. Mrs Crowhurst was in attendance representing North Laine Community Association. Mr Yalcin the applicant was in attendance and was accompanied by his legal representative, Mr Perkins.

52.3 The Licensing Officer, Mrs McNaught, gave the submission on behalf of the licensing authority explaining that the application was for a new premises licence for a kebab takeaway. It was proposed that late night refreshments would be served between 23.00-02.00 Sunday-Wednesday, -23.00-03.00, Thursday and 23.00-04.00, Friday-Saturday. It was proposed that the premises would be open to the public from 12.00 each day. The premises did not fall within the Cumulative Impact Area or the Special Stress Area. Two representations had been received from a Resident's Association and from Sussex Police.

52.4 Representations received had expressed concerns relating to the licensing objectives of the Prevention of Crime and Disorder and the Prevention of Public Nuisance. The representation received from Sussex Police had included conditions relating to the Prevention of Crime and Disorder. The applicant had agreed to the conditions and had amended their operating schedule accordingly, the Police had not however withdrawn their representation.

52.5 In answer to questions, as it appeared there were anomalies between the current hours of operation and the hours requested, it was explained that the premises currently traded between 9am and midnight and that the premises had an extant planning permission for A3 use between those hours. Whilst the planning and licensing regimes were separate, the planning permission would also need to be amended to stay open for longer hours.

52.6 Councillor Marsh sought clarification regarding the seating layout within the premises and the entrance, which it was confirmed was onto York Place.

52.7 Mrs Irving made the submission on behalf of the Police. Although the premises was not located in either the Cumulative Impact Area or Special Stress Area it was nonetheless situated within a few metres of Trafalgar Street which was within the Special Stress Area as referred to in Appendix B of the Council's Statement of Licensing Policy. Paragraph 4.7 of the policy stated that licensed premises in residential areas would

normally have a terminal hour of no later than 23.30. Paragraph 4.8 of the policy expressly stated that the North Laines was to be considered as a residential neighbourhood. Whilst the premises was strictly speaking just outside of the North Laines area, Sussex Police contended that this location should be considered as a mixed use area which in line with the Council's Statement of Licensing Policy, should have a terminal hour of no later than 2.00am.

- 52.8 Mrs Irving went on to explain the Sussex Police received complaints regularly from residents in the area concerning noise nuisance late at night, as well as anti-social behaviour associated with alcohol consumption. Whilst the premises was applying for late night refreshment only and not alcohol, many of its late night customers past 2.00am on Thursday, Friday and Saturday nights would have consumed alcohol before they congregated in the area of the premises to purchase hot food. Sussex Police requested the Panel had regard to the Council's Statement of Licensing Policy and refused to permit this variation. If the Panel were minded to grant a late night refreshment licence for this premises with or without hours past 2.00am, the Police were requesting that two additional conditions were added to the licence as set out in their letter of representation. These related to the installation of digital CCTV and appropriate recording equipment to be installed, operated and maintained throughout the premises externally and internally to cover all public areas with sufficient numbers of cameras as agreed with Sussex Police. Also, that the premises would contract for the provision of a recognised mobile support unit which would provide SIA qualified door supervisor back up 24 hours a day.
- 52.9 Councillor Marsh enquired regarding the position of the premises in relation to the boundary of the SSA.
- 52.10 Mrs Crowhurst made her submission on behalf of the North Laine Community Association. Mrs Crowhurst agreed wholeheartedly with the comments made by the Police. The North Laine Residents Association urged the Panel to consider the Statement of Licensing Panel (SoLP) in particular Paragraph 4.7 as highlighted by the Police. Although the premises were located on the edge of the North Laine, the area was one of mixed use as such should be treated in the same way as the North Laine. It was considered that hours of operation beyond 2.00am would result in increased levels of noise from drinkers with the potential for increased levels of anti social behaviour and vandalism. Residents suffered from noise disturbance from vehicles using premises in York Place/London Road as well as people noise, vehicles also parked nearby in Pelham Square and Trafalgar Street, which also gave rise to noise nuisance. There were concerns that many of the premises customers would probably have consumed alcohol beforehand. Many people congregated in York Place, Trafalgar Street and Pelham Square in the early hours of the morning disturbing residents who lived there. Any premises open until a later hour would exacerbate these existing problems.
- 52.11 Mr Perkins then gave his submission on behalf of the applicant. He explained that his client had taken control of the premises from January of that year and that he was in the process of applying for planning permission to vary the extant permission under that regime. The applicant had indicated their willingness to comply with all of the conditions proposed by the Police, indicating that the premises was responsibly run. Although the Community Association had focused on what they considered might happen, the

premises had operated without any complaints or problems and there was no reason to consider that this would not continue to be the case.

- 52.12 Whilst much had been made of the close proximity of the premises to the North Laine, but it was not and was part of a significantly different area. The premises was situated on a busy main road which had a different character. The validity of the representations made by the North Laine Community Association were queried as the premises fell outside their area. Mrs Crowhurst stated that there were flats above a number of premises in York Place and London Road and that a number of those residents were Members of the association.
- 52.13 Councillor Marsh asked why the applicant was seeking a later closing time than 2.00am and Mr Perkins explained that the applicant was seeking longer hours in relation to an identified customer need. The premises was located outside the SSA and as such it was not considered that a later closing hour would be problematic particularly as the applicant had agreed to engage the services of a mobile support unit.
- 52.14 The Chair, Councillor Cobb sought confirmation regarding as whether the premises had an outside area and it was confirmed that it did not. It was also confirmed that there was a toilet located in the basement area for use by their customers.
- 52.15 There were no further questions and the Licensing Officer therefore gave their closing submission on behalf of the licensing authority. The Panel were reminded that any conditions applied to the licence needed to be unambiguous, proportionate and enforceable.
- 52.16 Mrs Irving made the closing submission on behalf of the Police and re-iterated the comments set out in their letter of representation and during their earlier submission.
- 52.17 Mrs Crowhurst reiterated her earlier comments in respect of her concerns in relation to the application.
- 52.18 Mr Perkins made the closing submission on behalf of the applicant re-iterating the high standard to which the premises was run and the fact that the premises was outside the SSA and should therefore be considered differently to premises which were located within it.
- 52.19 The Chair stated that the Panel had considered all of the information provided in the paperwork and listened to all of the representations made that day and considered the representations received from the North Laine Community Association to be appropriate.
- 52.20 The Panel were pleased that the applicant had accepted recommendations from the Police regarding use of CCTV and Membership of the Brighton Crime Prevention Partnership. The premises were situated just outside the Special Stress Area and due to the presence of both commercial and residential properties the Panel considered this site to be in a mixed neighbourhood. The Panel had taken regard to Paragraph 4.7 of the Statement of Licensing Policy and noted that in this case there was conflict between the treatment given to applications in relation to main roads and the general policy around mixed neighbourhoods – on balance the Panel were of the view that because of

the impact on residents it was better to follow the normal terminal hour associated with mixed neighbourhoods.

- 52.21 Therefore in line with licensing policy the Panel were going to grant this licence with the following conditions in addition to those agreed with the Police. These would be:

02:00am, close, Monday-Sunday, 7 days a week; and
Addition of the condition agreed with the applicant that no children be permitted on the premises after 10:00pm.

- 52.22 **RESOLVED** – That a new Premises Licence be granted to Perfect Kebab and Chicken, 2 York Place, Brighton in the terms set out in Paragraph 52.—above.

Note: The Legal Adviser to the Panel confirmed that the applicant would receive notification of the Panel's decision in writing with details of their appeal rights attached.

53. , APPEAL AGAINST REVOCATION OF STREET TRADING LICENCE: ZONE B

- 53.1 The Legal Adviser to the Panel, Mr reminded the Panel that for the purposes of this hearing they were sitting as a Panel under the Local Government (Miscellaneous Provisions) Act 1982.
- 53.2 The Panel considered a report of the Head of Planning and Public Protection requesting that they hear and determine an appeal against the officer decision to revoke Jamie Patrick English's Street Trading Consent. The Panel took the decision that it was not necessary for this hearing to take place in closed session.
- 53.3 The Licensing Officer Ms Cornell explained that under the Local Government (Miscellaneous Provisions) Act 1982 the Council had designated consent streets and prohibited streets for the purpose of selling, offering or exposing for sale any article in the streets. Street trading consents were granted for a period of 12 months from 1 April every year but could be revoked at any time. It was an offence for a person to engage in street trading as defined in the 1982 Act without a valid consent.
- 53.4 Ms Cornell explained that complaints had been received regarding street trading in John Street, Brighton. In response to those complaints a letter had been sent reminding the trader, Mr English of the relevant permit conditions. Subsequently three further breaches of the street trading consent had been witnessed and in consequence a formal warning letter had been sent on 29 March 2011.
- 53.5 Three further breaches of street trading consent Condition B had been witnessed and a warning of revocation letter had been sent on 12 May 2011, requesting confirmation that this condition would be complied with. On 14 July 2011 following further breaches which had been witnessed a letter confirming revocation of the street trading consent had been sent.
- 53.6 Mr English stated that whilst he recognised that conditions of his consent had been breached he had experienced extreme problems in moving his van each day having found it blocked in. Due to the building works being carried out in the vicinity of Edward Street/John Street where he generally tried to park when he moved from his "space" he

was then unable to re-park which meant that he lost business, as a small trader he needed to be able to park and trade from his van every day. In answer to further questions Mr English explained that he towed the van to its location each day but was then unable to move the vehicle if he then found himself blocked in by a window cleaning van, it was the same van which had consistently blocked his vehicle in. When he had taken up this matter with the driver of the vehicle concerned they had refused to move.

- 53.7 Mr English explained that as he had only been trading for 6/7 months and taken out loans in order to fund his business and had a young family to feed. If he was unable to continue to trade he would be reduced to living on benefits. He explained that if some flexibility could be adopted in terms of the hours of operation of his licence then he would be able to arrive earlier/leave later for example. He was anxious to overcome any problems which had arisen in relation to his business and to move forward in a positive way.
- 53.8 Councillors Gilbey and Marsh sought confirmation regarding the circumstances surrounding such vehicles. It was explained that they were treated as a moving pitch and should not be parked on the public highway overnight, this applied to vehicles such as ice cream vans too. It was explained in answer to further questions that such vehicles could not be parked on the public highway.
- 53.9 Councillor Cobb, the Chair enquired why as Mr English could trade anywhere with zone, why he chose to trade in this part of the zone. Mr English explained that as a consequence of the restrictions in place due to the major building works taking place on the Amex site, this had limited the locations from which it was possible to trade, it had also become apparent that there was little trade after 5.00pm. In answer to further questions Mr English explained that the camber of the road limited the direction in which he could park his vehicle. He explained that as a small business which had only recently begun trading he was unable to pay for additional parking for his towing vehicle.
- 53.10 Discussions took place in relation to whether there was any flexibility in relation to the hours of operation of the consent. It was agreed that further discussion would be possible in relation to this matter.
- 53.11 The Chair stated that having considered all the representations that had been made, the Panel had agreed that the decision made by licensing officers was correct in the legal sense and Mr English's actions did contravene the Street Trading Consent, Paragraph B. the steps that the licensing officers had taken leading to revocation were reasonable and proportionate.
- 53.12 In order to support the licence holders own personal circumstances, the Panel had decided to overturn the decision to revoke on this particular occasion. The Panel commended the Licensing officers to carry out an intensive review of Mr English's trading patterns to ensure that no further breaches took place. If there were any further breaches the Panel would be very sympathetic to an immediate revocation without further warning.
- 53.13 **RESOLVED** – That the Street Trading Consent, Area B referred to above, be not revoked subject the Panel's directions as set out in Paragraph 53.—above. It should be

noted however, that should further breaches take place following further officer input that the Panel would be very sympathetic to immediate revocation without the need for further warnings being issued.

Note: The Legal Adviser to the Panel confirmed that notification of the Panel's decision would be received in writing.

The meeting concluded at 12.35pm

Signed

Chairman

Dated this

day of