

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

10.00am 5 JANUARY 2012

COMMITTEE ROOM 3, HOVE TOWN HALL

MINUTES

Present: Councillor Deane (Chair); Simson and Turton

Officers: Jim Whitelegg, Senior Environmental Health Officer, Rebecca Sidell, Lawyer and Caroline De Marco, Democratic Services Officer.

PART ONE

107. TO APPOINT A CHAIRMAN FOR THE MEETING

107.1 Councillor Deane was appointed Chair for the meeting.

108. PROCEDURAL BUSINESS

108a Declaration of Substitutes

108.1 There were none.

108b Declarations of Interest

108.2 There were none.

108c Exclusion of the Press and Public

108.3 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).

108.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of the item on the agenda.

109. FREEMASONS - APPLICATION TO VARY A PREMISES LICENCE

- 109.1 The Panel considered a report of the Head of Environmental Health and Licensing regarding an application for a variation of a premises licence under the Licensing Act 2003 for Freemasons, 38-39 Western Road, Hove.
- 109.2 Inspector Apps and Mr Bateup from Sussex Police, Councillor MacCafferty, on behalf of Ms Hunter (The Friends of Palmeira and Adelaide), Mr Sofroniou (Friends of Brunswick Square and Terrace), Ms Hunting (Lansdowne Area Residents' Association), Mr Gamper on behalf of Mr Cowell (East Brunswick Residents Association) attended the meeting to speak against the application. The applicants attended the meeting with their representative Mr Perkins in order to speak in favour of the application.
- 109.3 The Licensing Officer, summarised the application and explained that six representations had been received from a local resident, Resident's Associations and Sussex Police. The representations had concerns relating to the Prevention of Crime and Disorder, Public Safety and the Prevention of Public Nuisance. A representation from Environmental Health had been withdrawn following works that had been completed satisfactorily.
- 109.4 The Licensing Officer referred to recent changes made to Licensing Policy which had been adopted at full council on 20 December 2011 (to extend the cumulative impact area). These changes did not apply to this application as it sat within the Special Stress Area at the time the application was made on 10 October 2011.
- 109.5 The Licensing Officer stated that Licensing Policy stated that new and varied applications for premises and club premises certificates within SSAs would not be subject to the presumption of refusal, but operators would be expected to pay special attention when drawing up their operating schedules and to make positive proposals to ensure that their operation would not add to the problems faced in these areas. An appendix in the papers set out a list of potential measures that the licensing authority considered might be appropriate. Some of these measures were contained in the existing licence.
- 109.6 Councillor Simson asked about the affect of the embedded conditions. The Licensing Officer replied that many of these conditions had been superseded by the 2003 Act. Environmental Health and Licensing would welcome the tidying up of the licence.
- 109.7 Mr Gamper and Mr Sofroniou questioned why the application was not being considered as being situated in the Cumulative Impact Area as the amendment to the policy had been agreed on 20 December 2011. The Licensing Officer explained that the application and representations were made before the policy came into effect. All representations were based on the previous policy. Mr Sofroniou stated that the objectors did not accept the terms of the hearing, as they believed that the application should be considered as being in the CIA. The Panel Solicitor explained that her legal

advice was that it would be highly prejudicial to hold the hearing under the new policy. She stated that it was a lawful application and should be allowed to be heard.

- 109.8 Inspector Apps presented the Police representation as set out in their letter of 2 December 2011. The police had requested a compromise with amended hours and an extra condition. Following negotiations with the applicants a compromise had not been agreed. Inspector Apps quoted paragraph 4.7 of the council's licensing policy and stated that Sussex Police considered the premises to be in a mixed neighbourhood under the previous Special Stress policy. The policy stated that applications in mixed neighbourhoods would normally have a terminal hour of no later than 02.00 hours.
- 109.9 Inspector Apps stated that the premises was now situated in the new Cumulative Impact Area and the application would lead to cumulative impact. The police conducted "Operation Marble" in the area which had a substantial effect on police resources. There had been an increase in drunkenness and anti-social behaviour in the area. Extending opening hours to 03.00 hours would increase problems.
- 109.10 Councillor Turton asked if there were any reasons/causes for the increase in drunkenness. Inspector Apps replied that there was always an increase around Christmas/New Year. With extended hours, there was greater opportunity to drink. There had been more arrests and people going to court than this time last year.
- 109.11 Councillor Simson asked Inspector Apps what he considered a commercial area, if he considered the premises to be in a mixed area. Inspector Apps replied that an area with fewer residential properties than commercial properties would be considered commercial. In this area, most shops had some sort of residential accommodation. The side streets were residential.
- 109.12 Councillor Simson asked if complaints about noise in the area were general complaints. Mr Bateup informed the Panel that there had been two specific complaints. A complaint from a resident had been made on 16 September 2011 at 23.46 hours. A further complaint had been made on 14 October 2011 about noisy music and people standing outside the premises. The police were informed that this happened regularly. The complaint of 16 September was reported to the noise team.
- 109.13 The Licensing Officer reported that an email from Environmental Health in the papers stated that officers had investigated a complaint about noise coming from a vent in the property. The noise team were now satisfied with works carried out by the applicants.
- 109.14 Mr Perkins asked if problems of drunkenness were in this area only. Inspector Apps replied that there were problems in the city generally. However there had been calls to Farm Road and Western Road was always seen as one of the red areas for Operation Marble.
- 109.15 Mr Perkins pointed out that Environmental Health had withdrawn their representation following the removal of a loudspeaker. He asked why the police were not satisfied. Inspector Apps replied that the police were concerned about noise outside the premises.

- 109.16 Mr Perkins pointed out the later hours of some nearby premises. Inspector Apps stated that he was aware of the later hours of the other premises and he would have objected if any of these applications had come forward now.
- 109.17 Mr Sofroniou set out his representation, as detailed in his email of 7 December 2011, which was printed on page 44 of the agenda. He stressed that he did not accept the terms of the hearing. The Panel Solicitor reiterated her advice and referred to paragraph 13.32 of the Secretary of State's Guidance that although the application was not in the CIA, arguments of Cumulative Impact could still be relevant.
- 109.18 Mr Sofroniou quoted paragraph 4.8 of Licensing Policy. He asked why Brunswick was not considered residential. Mr Sofroniou stated that the area between Brunswick and Holland Road was a hotspot for anti-social behaviour and crime on the police website. A number of incidents had been recorded at the top of Brunswick Street West.
- 109.19 Mr Sofroniou referred to the decision relating to 8 Western Road at the Licensing Panel on 23 May 2011 and urged a level of consistency was maintained for future applications. That application had resulted in a variation to allow late night refreshment to be served from Sunday to Thursday until 12.00 midnight and Friday and Saturday until 1.00am.
- 109.20 Mr Sofroniou expressed concern about the wooden tables blocking the pavement outside the premises. Mr Sofroniou stressed that if more premises were allowed to open later, they would not be able to control people who moved further up the street. If each application was considered in isolation, problems would never be resolved.
- 109.21 Ms Hunting set out her representation, as detailed in her email of 30 November 2011, which was printed on page 36 of the agenda. Ms Hunting produced a map showing alcohol consumption (marked in red). Ms Hunting asked for clarity regarding the application for dancing at the venue. How many people would be accommodated? Ms Hunting stressed that residents suffered from anti-social behaviour and drunkenness.
- 109.22 Mr Gamper, Co-Chair of East Brunswick Residents Association spoke to Mr Cowell's email of 15 November 2011, as set out on page 33 of the agenda. Mr Gamper stressed that the tables and chairs outside Freemasons were an obstruction and that people were forced to walk onto the road. He considered that assurances needed to be given that this matter was dealt with. Mr Gamper stressed that there had been a lot of complaints about Freemasons before the current licensees were in place. People had given up complaining as they had become worn down and tired.
- 109.23 Councillor MacCafferty, spoke on behalf of Ms Hunter (The Friends of Palmeira and Adelaide). Ms Hunters representation was printed on page 34 of the agenda. Councillor MacCafferty considered that the grant of the licence would result in harm to children. There had been a large increase in the population of children in the area. Meanwhile, he had heard that Operation Marble had had to be intensified. Councillor MacCafferty stressed that the CIA had been extended at full Council in December. The vote had expressed concern that enough was enough.

- 109.24 Councillor MacCafferty spoke about the problem of noise in the area and stressed that he had been woken up many times himself. Another venue open to 03.00 hours was setting an unhealthy precedent. He stated that the vast majority of the people supporting the extension of the CIA came from the BN3 postcode. He asked the Panel to consider the residents' opinions.
- 109.25 Mr Perkins set out the case for the applicants. He reported that his clients had operated the licence for about 10 or 11 months. They operated 43 outlets in the city. The operators had clear policies and staff training. His clients were aware that the previous operators had a more relaxed attitude. The premises was better run now and was more food/event led. It was not a town centre boozier. Mr Perkins accepted that there had been some noise issues and the applicants had worked positively with Environmental Health. A loudspeaker near a vent had been removed and the Environmental Health representation had been withdrawn.
- 109.26 Mr Perkins stated that the police had undertaken a licensing inspection of the premises on New Year's Eve and no problems were found. Meanwhile, his clients were content to reduce the wind down period on the application by half an hour.
- 109.27 Mr Perkins stated that the Panel must consider the application under the previous policy, in place before 20 December 2011. Existing conditions were reasonably stringent. Door staff were on duty on Friday and Saturday night. If the application was agreed today, there was a proposal to do a risk assessment and provide additional door staff if necessary. The external areas were closed and tables were removed by 23.00 hours. Tables were not placed on the public highway. They were placed on land owned by his clients. Meanwhile, the area outside the premises was regularly patrolled. Doorstaff on duty on Friday and Saturday were aware of their responsibility not to block pavements.
- 109.28 Mr Perkins informed the Panel that the premises had a side entrance, which was no longer in use as a door to the venue. It was used as an emergency exit only.
- 109.29 Mr Perkins suggested that the Panel might want to add a condition stating that external tables would be removed by 23.00 hours and that no drinks would be taken outside after 23.00 hours.
- 109.30 Mr Perkins stated that Sgt Wachope was consulted about the application and indicated that he did not see a problem with the premises. Mr Perkins stressed that the premises were closing earlier than those around them. Customers were saying that as Freemasons was closing they would go to other premises in the area. Inspector Apps responded to this point stated that the Police position remained as stated in their letter of 2 December 2011.
- 109.31 Mr Perkins noted that there were three kebab shops nearby. One was open until 04.00 hours and another to 05.00 hours. Mr Perkins stressed that in considering the application, the Panel should differentiate between Western Road (a 24 hour area) and the side streets. Western Road was a noisy area, with buses going up and down.

- 109.32 Mr Perkins stated that the application included provision for music and dancing. The function room had a capacity of 100. The applicants wanted to regularise the conditions. The function room was used for parties, weddings and dance classes.
- 109.33 Mr Perkins commented on the various representations. He considered Mr Cowell's complaint was about the area generally. The Panel needed to consider the application on its own merits. Ms Hunter had made a general complaint. A review could be sought if there were problems with the premises. Ms Hunting's complaint was what might happen and there was no evidence. Mr Perkins's thought that Mr Atkins may have made the complaint to Environmental Health. This matter had now been resolved. The police representation was about noise, and this had been resolved. Meanwhile, in relation to the representation from Brunswick Square and Terrace, Mr Perkins pointed out that this was an association of an area some way from the premises. It was a statement of what might happen.
- 109.34 Mr Perkins stated that the premises had well crafted conditions in force. In addition to the additional conditions offered at paragraph 109.27 above, his clients also offered an additional proposal to allow no new admissions within 30 minute of closing hours.
- 109.35 Councillor Turton asked why the applicants had not accepted the compromise suggested by the police. Mr Perkins replied that the compromise fell far short of what his clients wanted to achieve.
- 109.36 Councillor Simson asked if the DPS or other staff members had received complaints other than the noise complaint. The premises manager replied that he had received complaints from the lady who lived next door regarding noise from the function room being heard in her home. She was happy to be able to call the manager at any time on his mobile. Meanwhile, he had tweaked the noise levels. He had a good relationship with the lady concerned. No-one else had complained.
- 109.37 In answer to a question about the outside areas, the manager explained that the wooden benches were on a bit of land that went no-where. The front area was pavement and the premises had a licence for placing tables and chairs on the highway. These were removed at 23.00 hours. At the side there was no pavement and the tables were chained. There was no possibility of walking on that side of the road. The side entrance was closed and used as a fire exit.
- 109.38 Councillor Simson asked how the tables in the side street were put out of use. The manager replied that the manager and door staff monitored the situation. He was happy to have a condition to that effect.
- 109.39 Councillor Simson asked about the condition offered by Mr Perkins regarding no re-admissions. Mr Perkins stated that he was offering no re-admissions after 01.30 hours.
- 109.40 Councillor Deane asked if there were barriers around the outside tables. The Manager replied that there was not enough room for barriers. He would monitor the tables and chairs during the day to ensure they were not a problem.

- 109.41 The police asked about capacity. The manager replied that the upstairs held 100 and the downstairs held 100. The downstairs usually attracted 50-70 people.
- 109.42 Councillor MacCafferty referred to Mr Atkins reference to noise disturbance in his representation on page 38 of the agenda. He asked how the applicants would prevent noise disturbance. The manager replied that he thought Mr Atkins may have made the noise complaint. The loud speaker had been removed. The Environmental Health Officer was satisfied. The side entrance was not in use and people were controlled through the main door.
- 109.43 Councillor MacCafferty questioned how noise nuisance could be prevented. The applicants had late hours in a densely residential area. He stressed that noise prevention would be paramount and sought assurance about this matter.
- 109.44 Mr Perkins replied that it was not a licence to cause nuisance. If there was nuisance, there was an immediate remedy, which was a review.
- 109.45 Ms Hunting asked why there had been no consultation with any of the residents associations or action groups. She considered that the residents had been ignored. Mr Perkins replied that there had not been a dialogue coming to his clients. There had been no complaints. They had been taken aback at the number of representations made by residents' associations. His clients were happy to liaise with local residents as they did in other areas of the city.
- 109.46 Mr Gamper asked about smokers outside the premises. Mr Perkins replied that the applicants could have control of the immediate area, but they could not deal with the area further up the road.
- 109.47 Mr Sofroniou stated that according to police evidence on their website, there had been 8 incidents around the area of Freemasons. Yet the applicants had said that there had been no evidence of crime. Mr Perkins asked Mr Sofroniou if he could point these incidents to Freemasons. Mr Sofroniou replied in the negative.
- 109.48 Mr Sofroniou asked about the side road where the wooden tables were sited. He asked whether this area was highway and why the tables were not sited further down the road in the car park. The manager replied that people would be hidden from view in the car park. The door supervisors and staff could supervise people more easily at present. The side road had no pavement.
- 109.49 Mr Sofroniou pointed out that one of the Kebab shops mentioned was opened to 12 midnight Friday and Saturday. The manager replied that the kebab shop was open at 04.00 hours on one occasion.
- 109.50 In answer to a question put by Councillor Simson, the manager confirmed that the function room upstairs had a separate stairwell. There was no mix of clients.
- 109.51 Councillor Deane asked Mr Perkins about his understanding of the area. He replied that Western Road was essentially commercial. There were residential streets behind it.

- 109.52 The Licensing Officer gave his closing observations. He stressed that although the Panel had heard reference to other premises, they should consider the application on its own merits. The Licensing Officer referred to paragraphs 4.6, 4.7 and 4.8 of the Statement of Licensing Policy. Licence premises in residential neighbourhoods would normally have a terminal hour of no later than 23.30 hours. In mixed neighbourhoods they would normally have a terminal hour of no later than 02.00 hours. It was up to the Panel to determine if this area was mixed. Any conditions on the licence should be clear, precise and enforceable.
- 109.53 Inspector Apps gave his closing observations. The application was in the SSA. The area was considered a crime hotspot by the police, although incidents could not be identified with this specific premises. The police were concerned about negative impact and considered that the terminal hour should be 02.00 hours in what they considered was a mixed commercial/residential area.
- 109.54 Councillor MacCafferty gave his closing observations. He stressed that the Panel had heard from the police, residents and residents' associations. A successful application would put the area under stress. There would be a further risk of crime and disorder if the opening hours were extended. Councillor MacCafferty had grave concerns regarding the extension of hours.
- 109.55 Mr Perkins gave his closing observations. Reference had been made to the CIA. He considered this was not relevant. Mr Perkins stated that the Panel should consider the application under the existing policy at the time the applicants applied for a variation. The premises fell within the Special Stress Policy. The premises was situated in a busy main road. There should be a presumption of granting the licence.
- 106.56 Mr Perkins considered that existing conditions were more than adequate. However, his clients had offered further conditions. There was no evidence that the application would cause a problem. The same number of people would be in the area whether the application was granted or not. A successful application would allow people to stay in the premises rather than go to another premises. If there were problems it would be possible to apply for a review.
- 106.57 Mr Perkins considered that the application should be granted.
- 106.58 The Panel Lawyer stressed that although the application was not in the CIA, arguments of cumulative impact could still be relevant.
- 109.59 **RESOLVED** - The Panel Members have read the papers and listened carefully to all the representations and arguments put forward today. This has been a difficult decision for the Panel in balancing the merits of the application against historical concerns relating to the premises and concerns about the area in general. The Panel are mindful that this premises is within a Special Stress Area (at the material time) and that there are problems in the area generally of public nuisance and anti-social behaviour which are not directly associated with the Freemasons.

The Panel has decided to grant the variation application as follows:
Hours for licensable activities applied for (excluding the function room):
Monday - Thursday 10.00 to 01.00;

Friday - Saturday 10.00 to 02.00;
Sunday 12.00 to 01.00

Opening Times:

Monday - Thursday 10.00 to 01.30

Friday - Saturday 10.00 to 02.30

Sunday 12.00 to 01.30

Late night refreshment Sunday - Thursday 23.00 to 01.00; Friday – Saturday 23.00 to 02.00

The Hours for the function room upstairs in the premises to cease 30 minutes earlier for all licensable activities and closing times.

There shall be an additional hour on all statutory bank holiday weekends (Friday, Saturday, Sunday) and on the Thursday before Good Friday; Christmas Eve and St Georges & St Patricks day. Additionally and in such case, subject to not less than 7 days written notice to Sussex Police, on occasions of local, national or international significance.

The embedded conditions are removed.

The panel attaches the following conditions to the licence:

1. After 22.00 hours, the side door is to be kept closed and only to be used as an emergency exit
2. No drinks to be taken outside the premises after 23.00 hours
3. All external tables to be put out of use by 23.00 hours.
4. No new admittance to the premises after 01.30 hours.

The panel considers that the 2 different operating times for the 2 elements, bar and function room will aid dispersal from the premises. Also because of the location of the premises on a busy main road dispersal will be assisted by easy access to buses and taxis.

The panel do not consider that this minimal increase in operating hours will adversely impact on the licensing objectives. The panel consider that this is a responsible well established operator who has fairly recently taken over the premises and has responded to Environmental Health and adjoining resident concerns and who will not contravene the licensing objectives.

The Panel solicitor reminded the parties of their appeal rights to the Magistrates Court under the Licensing Act and that appeals must be made within 21 days of written notification of the decision given at the hearing.

The meeting concluded at 1.27pm

Signed

Chair

