

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

10.00am 29 MARCH 2012

COMMITTEE ROOM 3, HOVE TOWN HALL

MINUTES

Present: Councillor ; Deane, Simson and Sykes

PART ONE

138. TO APPOINT A CHAIR FOR THE MEETING

138.1 Councillor Deane was appointed Chair for the meeting.

139. PROCEDURAL BUSINESS

139a Declaration of Substitutes

139.1 There were none.

139b Declarations of Interest

139.2 There were none.

139c Exclusion of the Press and Public

139.3 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).

139.4 **RESOLVED** - That the press and public be not excluded from the meeting.

140. LATIN LOUNGE - LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

140.1 The Chair welcomed everyone to the hearing, asked everyone to introduce themselves and explained what would happen at the hearing and how and when the panel would make their decision.

- 140.2 The panel considered a report of the Head of regulatory Services concerning an application for Variation of a Premises Licence under the Licensing Act 2003 for Latin Lounge. The premises were located at the ground floor Travelodge, 12-14 West Street, Brighton, BN1 2RE. The application was submitted by Funky Bars and Restaurants Ltd and Mr J Minor, the Designated Premises Supervisor of the venue attended the hearing. Sussex Police submitted a representation and Mr Spink (barrister), Inspector Apps and Mr Bateup attended the hearing on behalf of the Police, and Councillor J Kitcat submitted a representation and attended the hearing.
- 140.3 The Licensing Officer provided an overview of the application. This was an application for a variation to an existing premises licence. The applicant was seeking to extend their current hours for live music, recorded music, alcohol and opening hours and to add provision of facilities for dancing to the licence. The applicant had also applied to remove four conditions from Annex 3 of the licence (1, 2, 4 & 16), these include the removal of conditions that alcohol would only be sold or supplied as ancillary to a table meal and would only be served by waiter/waitress service. Two representations were received against the application, from a local councillor and Sussex Police on the grounds of the prevention of crime and disorder, prevention of public nuisance and cumulative impact. The premises were within the Cumulative Impact Area, 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. The Council's Statement of Licensing Policy states that applications for variations, which are likely to add to the existing cumulative impact, would be refused following relevant representations. This presumption of refusal could be rebutted by the applicant if they could show that their application would have no negative cumulative impact on licensing objectives including prevention of crime and disorder and public nuisance. Furthermore, this special policy was not absolute. Upon receipt of a relevant representation, the licensing authority would always consider the circumstances of each case and whether there were exceptional circumstances to justify departing from its special policy in the light of the individual circumstances of the case. If an application was unlikely to add to the Cumulative Impact of the Area, it may be granted. Amendments were made to our Statement of Licensing Policy in December 2011, which included a more thorough examination of the diversity of premises within our city. This would ensure that there was a mix of the different types of licensed premises and attract a more diverse range of customers from different age groups, different communities and with different attitudes to alcohol consumption. A "matrix" approach to licensing decisions had been adopted, a table of which could be found on page 8 of the agenda. In terms of licensing history, a complaint was received at the end of last year that the premises were not operating in accordance with the conditions on their licence. A visit was conducted by our licensing department in which the complaint and the details of the licence were discussed, but no breaches were found.
- 140.4 The Chair invited questions for the Licensing Officer. Councillor Simson asked what the alleged breach had been, and was advised that it had been that the premises were not operating within the café/bar licensing conditions. Mr Minor asked whether the complainant had come from the public, the police or a councillor. The Licensing Officer was only able to confirm that it had come from one of those groups. There were no questions from either the Police or Councillor Kitcat.

- 140.5 The Chair invited Councillor Kitcat to set out his representation. Councillor Kitcat confirmed that he was Ward Councillor for Regency Ward which covered West Street. Councillor Kitcat said that the street was in the heart of the Cumulative Impact Area and also had a large number of residential properties in it. Police resources were already stretched and it wasn't acceptable to allow another vertical drinking or nightclub type establishment in the area. Councillor Kitcat said that he accepted that the economy was bad at the moment and that businesses needed to look at all options, but that was not an issue for Licensing. As this premises was in the centre of the Cumulative Impact Area he urged the Panel to refuse the variation in its entirety. The chair invited questions to Councillor Kitcat. Mr Minor referred to Councillor Kitcat's written representation (page 43 in papers), and his comments that 'Latin Lounge's existing licence were the result of strong objections from the Police, ward members and the community'. Mr Minor stated that there were no reps from the community last time, and neither had councillor Kitcat submitted a representation. Councillor Kitcat replied that it was immaterial whether he made representations before. Mr Minor asked Councillor Kitcat if he had proof that allowing a variation to the licence would add to the cumulative impact of the area. Councillor Kitcat said that it was not for him to prove that, but for the applicant to prove it wouldn't. There were no questions from the Panel or the Police.
- 140.6 The Chair invited the Police to set out their representations. Mr Spink set out the Police's representations. The Latin Lounge was in the heart of the Cumulative Impact Zone, the variations sought were significant changes and the whole application should be rejected. The proposed changes would take the premises from a food led venue to a vertical drinking and nightclub establishment. Mr Spink referred to paragraph 2.6.5 in the agenda papers regarding the Council's Special Policy. The Special Policy would only be overridden in exceptional circumstances and could only be rebutted where the applicant showed that a variation to a licence would have no negative Cumulative Impact. The variations to the licence would allow the premises to operate as a nightclub until 3am every day. The Police were concerned that the Applicant wanted to remove the Condition that 'Patrons will not be permitted to queue for entry outside the premises after midnight'. It was well known that issues of Crime and Disorder and Public Nuisance arose from queuing. No information had been provided in the application to say how the Applicant would deal with any queue at the premises. The Latin Lounge was currently a food led venue and restaurant's patrons tended to leave at different times. However, if the premises became a nightclub the patrons would all leave at the same time which would put additional pressure on the police. The Applicant had not put forward any exceptional circumstances for allowing a variation to the licence, and nor had they made any reference to the premises being within the Cumulative Impact Zone or addressed the effect it could have on the area. The Police were further concerned that the Applicant had not contacted them before to discuss the possible variations to the licence. Mr Spink stated that the police were aware that there had been some concerns over the way the premises were run and stated that on 16 October 2011 a licensing check was carried out and there was concern that alcohol was not being served only as an ancillary to food being served. Although the police were concerned, no action was taken. On 10 March 2012 it was noted that there was only 1 doorman on duty, and when this was pointed out the premises closed for the evening.
- 140.7 The Chair invited questions to the Police. Councillor Simson referred to the visit on 16 October and asked if that had been part of a joint venture with Licensing. Inspector Apps stated the visit had been prompted following intelligence that the venue was allowing

vertical drinking. Mr Minor confirmed there was seating for 103 people at the premises. On the 10 March one security guard was unwell and not able to work. On those occasions the Latin Lounge would use the hotel security but on that day the hotel security was also not at work and so the venue had voluntarily closed for the day. Inspector Apps added that the 10 March was the day that Brighton & Hove Albion were playing Portsmouth FC; the premises had been visited and the staff were very cooperative and agreed to close at 1am.

140.8 The Chair invited Mr Minor to speak on the application. Mr Minor stated that it was a misconception by the police that he wanted Latin Lounge to become a nightclub. The venue was a restaurant/bar and wanted to remain as such. The current Licence had 16 conditions and the application was only to remove 4 of them. The venue wanted to provide dance classes and the Licensing Officer advised that the Condition 16 would need to be removed. The variation to remove the condition not to allow queuing had been made as from time to time people waited to be seated, and it could therefore potentially be interpreted that by allowing this the premises were not complying with the conditions of the licence. With regard to security, the premises were responsible and would always review the level of security whether or not it was a condition of the licence. The police had stated that with a restaurant customers left at different times; this was incorrect and Latin Lounge's customers stayed until the premises closed.

140.9 The Chair invited questions to Mr Minor. Councillor Sykes asked Mr Minor if he were aware of Cumulative Impact and what his understanding of 'Prevention of Public Nuisance' was. Mr Minor stated that it was important to have a protocol in place to protect staff and property. The premises employed security staff who all had radios and had a protocol to alert all staff if there was a problem. When the premises held a planned promotion a risk assessment would always be carried out. CCTV was in place and customers were aware of that. The premises had few incidents and were not a venue which created a queue outside to make it look busy. Money was not left on the premises overnight. Public nuisance came from a lack of respect for authority. Public nuisance, such as dogs fouling the street or the public using the venue's toilets when they were not customers, was not something the premises could control.

140.10 Councillor Simson asked Mr Minor if he understood the Council's policy, and the onus that was on the applicant to show the additional measures which would be put in place to mitigate the removal of the Conditions. Mr Minor stated that he didn't understand why it was thought that customers would cause more problems. Customers were already there and he just wanted them to be able to stay longer. It was impossible for the police to prove that the variation to the licence would cause more cumulative impact. Councillor Simson asked if Mr Minor did not think that more people staying longer, drinking more etc would not impact on the area. Mr Minor said that the customers would already be in the area and so there would be no increase in numbers. Councillor Simson asked what type of Temporary Event Notices the premises had had. Mr Minor said they had had 7 or 8 and they included Polish weddings, salsa nights etc.

140.11 Councillor Deane referred to the dance classes and asked what time they would be held. Mr Minor said they would be held mainly in the evening, the instructor would be there for an hour or so and then the band would continue playing and customers could continue practising. Councillor Deane asked if it was expected that customers would stay and practise until 3am. Mr Minor said he wasn't sure, but he asked for an extension

to the licence as he wasn't happy when he had to close and then saw his customers going to other nearby venues.

140.12 Mr Spink noted that Mr Minor felt that changes to the licence would not cause more cumulative impact, and suggested that removal of the restriction to the current licence would change the nature of the club and attract different customers. Mr Minor replied that the premises would still be a food led venue. Mr Minor referred to the dance classes asked Mr Minor how many instructors would be employed. Mr Minor stated that they would hold salsa lessons on Tuesday and Thursday from 8pm to 3am. If the variation were allowed further lessons would be arranged. The Police stated that holding dance lessons was a way to get round the licensing law, especially when lessons would only be held for an hour with the rest of the evening being given for practising. Mr Minor stated that lessons would be held from 8pm to 10pm and then practise for the rest of the evening. Mr Spink asked what would happen if someone arrived at the premises after the lessons had finished, and whether they would be allowed to join in the practise dancing until 3am. Mr Minor said they would be allowed to practice too. Mr Spink referred to the removal of the restriction on queuing and asked what proposals they had for managing any queue. Mr Minor stated that if there were a queue it would mean they were full and he had no interest in containing a queue. The application to remove the condition was made as there may at times be a queue and he didn't want to breach the conditions of the licence. Inspector Apps referred to the removal on Condition 1 and 2 (page 26 on the agenda) and asked why if the premises wanted to remain as a food led business. Mr Minor stated that he wanted it to be restaurant and a bar and didn't want a restriction that customers had to sit. The Chair asked for clarification on the number of tables proposed for the premises and noted that the plan of the premises did not show any tables. Mr Minor referred to the plan (page 28 on the agenda) and said that there was currently seating for 103 people, and when dance lessons were held 5-6 tables would be removed. The plan showed where the expected dance area would be. Mr Minor stated that if necessary he would be happy for a limit to be placed on the number of people who could stand.

140.13 The Chair asked for closing statements.

The Licensing Officer stated that this was an application for a variation to an existing premises licence. The applicant was seeking to extend their current hours for live music, recorded music, alcohol and opening hours and to add provision of facilities for dancing to the licence. The applicant had also applied to remove four conditions from Annex 3 of the licence (1, 2, 4 & 16). Two representations were received against the application, from a local councillor and Sussex Police on the grounds of the prevention of crime and disorder, prevention of public nuisance and cumulative impact. The premises were within the cumulative impact area; cumulative impact was defined as the potential impact upon the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. The Council's Statement of Licensing Policy stated that applications for variations which were likely to add to the existing cumulative impact would be refused following relevant representations. The presumption of refusal could be rebutted by the applicant if they could show that their application would have no negative cumulative impact on licensing objectives including prevention of crime and disorder and public nuisance. Furthermore, this special policy was not absolute. Upon receipt of a relevant representation, the licensing authority would always consider the circumstances of each case and whether there were exceptional circumstances to justify departing from its special policy in the light of the

individual circumstances of the case. If an application was unlikely to add to the Cumulative Impact of the Area, it could be granted. Amendments were made to the Statement of Licensing Policy in December 2011 that included a more thorough examination of the diversity of premises within the city. This would ensure that there was a mix of the different types of licensed premises and attract a more diverse range of customers from different age groups, different communities and with different attitudes to alcohol consumption. A “matrix” approach to licensing decisions had been adopted, a table of which could be found on page 8 of the agenda.

Mr Spink stated that the applicant had not put forward exceptional circumstances to justify departing from the Council’s Policy. Removing the conditions would allow the premises to operate as a nightclub. There would be restriction on food being served by waiting staff, and the dance classes were unenforceable especially if practice sessions were allowed for those who had not taken part in the actual dance class. The Police had particular concern that Mr Minor had stated that the premises had no interest in maintaining any queue. Allowing the premises to open until 3am would mean a large number of people leaving the premises at the same time. The proposed variation to the licence would allow the premises would become a nightclub. The Policy stated that this should only be allowed in exceptional circumstances.

Mr Minor stated that the changes were robust and would not lead to negative impact to the area. No evidence had been produced to show that a variation to the licence would lead to negative impact. Small businesses needed to be supported, and if the variation to the licence were allowed more staff would probably be employed.

The Panel retired to consider the application.

140.14 **RESOLVED**

The Chair stated:

The Panel has listened to all the submissions and carefully considered all the arguments put forward.

The premises are within the Cumulative Impact Zone (CIZ). Our licensing policy states that within this area, applications for variations which are likely to add to cumulative impact would be refused unless the applicant can clearly demonstrate that it will not add to the cumulative impact of the area. This policy will only be overridden in exceptional circumstances. The current conditions adhere to the licensing objectives. The panel considers that removing the current conditions as proposed, adding regulated entertainment, and extending the operational hours, would substantially alter the nature of the business. The panel believes that the variation proposed will not promote the licensing objectives and shares the police concerns that it is likely to add to cumulative impact in relation to public safety, crime and disorder and public nuisance within the area. The panel considers that the applicant has not shown a thorough understanding of the nature of cumulative impact and has not demonstrated that removing the conditions as proposed will not add to cumulative impact. We are therefore refusing this application.

The meeting concluded at 12.30pm

Signed

Chairman

Dated this

day of