

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

10.00am 8 JUNE 2015

COMMITTEE ROOM 1, BRIGHTON TOWN HALL

MINUTES

Present: Councillors ; Marsh, Gilbey and Simson

Officers: Sarah-Jane McNaught, Licensing Officer; Rebecca Sidell, Lawey and Penny Jennings, Democratic Services Officer

PART ONE

4 TO APPOINT A CHAIR FOR THE MEETING

4.1 Councillor Marsh was appointed Chair for the meeting.

5 PROCEDURAL BUSINESS

5a Declaration of Substitutes

5.1 There were none.

5b Declarations of Interest

5.2 There were none.

5c Exclusion of the Press and Public

5.3 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).

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

6 SHIV NEWS LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

- 6.1 The Panel considered a report of the Director of Public Health requesting that the Panel determine an application for a New Premises Licence under the Licensing Act 2003 for Shiv News, 79-80 St James' Street, Brighton.
- 6.2 Sergeant Ben Hearth was in attendance on behalf of the Police accompanied by Mr David Bateup. Ms Sarah Cornell was in attendance on behalf of the Environmental Health Department. Mr Roger Rolfe was in attendance as an objector to the application on behalf of the Kingscliffe Society. Dr Janie Thomas was in attendance as an objector in her capacity as a local resident. Mr Kanakbhai Patel, the applicant was in attendance accompanied by his representative Mr Robert Jordan.
- 6.3 The Licensing Officer, Sarah-Jane McNaught gave a presentation detailing the application received for a new premises licence under the Licensing Act 2003 for a new premises licence for Shiv News, 79-80 St James' Street, Brighton for a new off-licence at a newsagents and convenience store for the supply of alcohol for consumption off the premises between 09.00 and 21.00 every day. The premises fell within the Cumulative Impact Area and four representations had been received in respect of this application. They had been received from a local resident, a Residents Association, Sussex Police and the Licensing Team. The representations received had expressed concerns relating to the Prevention of Crime and Disorder, Cumulative Impact, Prevention of Public Nuisance and the Protection of Children from Harm.
- 6.4 It was explained that after careful consideration the licensing authority had determined that the concentration of licensed premises in a small area of the city centre was causing problems of crime and disorder and public nuisance, and that therefore an approach to Cumulative Impact was necessary as part of its statement of licensing policy. The special policy would only be overridden in exceptional circumstances. The effect of this special policy was that applications for new premises licences or club premises certificates within the Area, or variations which were likely to add to the existing Cumulative Impact would be refused following relevant representations. This presumption could be rebutted by the applicant if they could show that their application would have no negative Cumulative Impact. The special policy also applied to all new premises licences and club premises certificates, for example pubs, restaurants and take-away establishments.
- 6.5 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 departure 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 Area, it might be granted. The impact could be expected to be different from premises with different styles and characteristics. The fact that a premises would be/was exceptionally well managed with a well qualified applicant, or that there were no residential premises near by, would not be considered exceptional. If the licensing authority decided that an application should be refused, it would still need to show that to grant the application would undermine the promotion of one or more of the licensing objectives and that conditions would be ineffective in preventing the problems involved. The Licensing Authority would keep the Cumulative Impact and Special Stress Areas under review and should the authority find that problems of crime and disorder or nuisance were not improving or were worsening, these policies would be reviewed.

Representations by Interested Parties

- 6.6 Sergeant Hearth stated that the Police were opposed to grant of this application for a new premises licence on the grounds in view of its location in the Cumulative Impact Area on the grounds of cumulative impact, the prevention of crime and disorder and public nuisance. The Council's Statement of Licensing Policy was clear that no new off-licence permissions were to be given in the cumulative impact area and that this policy would only be departed from in exceptional circumstances. In the Police' view the granting of a new premises licence would not promote the licensing objectives and would give rise to a negative cumulative impact. The concentration of licensed premises within this area of the City already gave rise to problems of anti-social behaviour, crime and disorder and public nuisance.
- 6.7 Sargeant Hearth concluded his submission by stating that the Police contended that nothing either in the application or the operating schedule rebutted the presumption of refusal contained in the statement of licensing policy nor provided any reason for the Licensing Authority to depart from its special policy, they were therefore inviting the Panel to refuse this application.
- 6.8 Councillor Simson referred to the fact that the applicants had offered to take part in a bottle marking scheme and asked whether the Police considered that this was an effective mechanism in helping to identify problem, areas within the CIA. Sergeant Hearth stated that whilst this showed a willingness to co-operate on the part of a premises it was not fail safe and did not of itself prevent problems due to intoxication. Alcohol could be purchased from a number of locations and could be brought into the CIA or taken to other locations across the City.
- 6.9 Councillor Marsh asked whether the applicant or his representative had any contact with the Police in relation to their application and it was explained that following a brief initial discussion which had taken place there had been no further contact from the applicant or those representing him.
- 6.10 The Senior Licensing Officer, Sarah Cornell, stated that she had made a representation against this new premises licence application behalf of the Licensing Team of the Environmental Health Department on the grounds that it would undermine the licensing objectives of prevention of crime and disorder and the protection of children from harm and was contrary to the Council's Statement of Licensing Policy. The Licensing Authority, Police and Local Authority Partnership Alcohol Programme Board were concerned about emerging themes concerning the availability of alcohol, in particular, proxy sales, pre-loading, street drinking and binge drinking. In the city there were local problems as a result of these issues which arose as a result of cheap alcohol and fierce localised price competition, particularly between off-licence stores and supermarkets. There was an obvious disconnect in where alcohol was sold for off consumption and any subsequent nuisance and it was difficult to link impact back to the place where alcohol was purchased and consumed.
- 6.11 Whilst each application should be considered on its individual merit, this premises was located in Queen's Park ward which according to the Council's Public Health Framework for Assessing Alcohol Licensing was ranked the 3rd worst out of 21 wards for all alcohol related violence, violence against the person, non-injury assault and sexual offences

(2nd worst), as well as total crime where the victim or suspect was under the influence of alcohol. This ward was also ranked the third worst for ambulance call-outs related to alcohol and was ranked significantly higher (1st) for A & E attendances and hospital admissions related to alcohol.

- 6.12 Granting this application would be likely to add additional burdens and problems to the already challenging area and although the applicant had put a number of provisions into their operating schedule, there had been no mention of the Statement of Licensing Policy or Cumulative Impact Area and she did not therefore believe that the applicant had demonstrated that there were exceptional circumstances to justify a departure from the Policy; it was therefore requested that this application be refused.
- 6.13 Mr Rolfe then spoke in his capacity as a representative on behalf of the Kingscliffe Society. Mr Rolfe explained that the society wished to object to the application in view of the fact the Cumulative Impact Area where the premises were situated was already under extreme pressure due to the use of alcohol the existing Matrix approach should be respected. His group could not see any evidence as to why/how this premises constituted an exception to policy considering therefore that this application should be refused.
- 6.14 Dr Thomas then spoke in her capacity as a local resident stating that notwithstanding that the applicant might run their premises responsibly if a licence was granted this would result in another premises licensed to supply alcohol in an area where the existing problems associated with excessive alcohol consumption were well documented. The area was already at saturation point and against that back drop it was very hard to see how in her view another premises would not add to the existing negative cumulative impact. The current statement of licensing policy was clear that there was a presumption that any applications for new licences should be refused unless exceptional circumstances were shown which meant that it was appropriate for the policy to be overridden and for permission to be granted. No evidence had been given that this would be the case in this instance.
- 6.15 Dr Thomas stated that no personal criticism of the applicant was intended, however the Council's policy in respect of premises located within the CIA/CIZ was clear, there was an overwhelming need to ensure that the licensing objectives were upheld and that the quality of life of residents was protected and at the very least not compromised any further.
- 6.16 Mr Jordan then spoke on behalf of the applicant, Mr Patel in support of his application. He explained that the premises was newly opened and had been trading as a local convenience store. Mr Patel now wished to upscale the premises and to have the ability to sell alcohol both as a means of enhancing his business model and in response to requests from his customers. He understood his responsibilities in terms of not selling to street drinkers and those who already appeared to be under the influence of alcohol.
- 6.17 Councillor Simson asked if Mr Jordan/Mr Patel understood that in the case of premises selling alcohol within the CIA the bar was set far higher than elsewhere in the city and that the applicants had to show that their premises was exceptional and would not add to the existing cumulative impact. Mr Jordan stated that this was understood and that it

was considered that Mr Patel had done this by virtue of the conditions which he had willingly included in the operating schedule.

- 6.18 Councillor Simson stated the proposed conditions to be attached to any licence granted were similar to those attached to the licences for many premises in the city, the bar was set much higher in the CIA, particularly, as any premises selling alcohol would increase the supply. Mr Jordan stated that as the premises would be exceptionally well run as evidenced by the proposed conditions that was in itself an indication that the premises would not give rise to any problems.
- 6.19 Councillor Marsh asked why given the premises location within the CIA Mr Jordan/ Mr Patel had not discussed the application in detail with the Police. Mr Jordan stated that following initial discussions which had indicated that the Police were not minded to support the application there had seemed little point in discussing the application further and as they had wanted to proceed they thought they would let the Panel decide.
- 6.20 Councillor Marsh asked whether Mr Patel had run any other premises and he explained that he had worked at other premises where alcohol had been on sale elsewhere in the city.

Closing Submissions

- 6.21 No further matters were raised, therefore the Licensing Officer Sarah-Jane McNaught gave her closing submission. She explained that the Panel needed to have regard to the history of the premises or of the likelihood of any nuisance and whether any exception to the policy of refusing an application for premises within the Cumulative Impact Area had been made. Any conditions to be imposed needed to be reasonable and enforceable and if the Panel considered that the application should be refused, it needed to show that that grant of the application would undermine at least one of the licensing objectives and that conditions would be ineffective in preventing the problems involved.
- 6.22 Sergeant Hearth reiterated his earlier comments that in the Police's view it was telling that the applicant had made no reference whatsoever to cumulative impact or the Statement of Licensing Policy, nor cited any exceptional circumstances for departure from policy. In their view no information had been provided to rebut the presumption of refusal or to indicate any reason for departing from the special policy.
- 6.23 Sarah Cornell made her closing submission on behalf of the Licensing Team of the Environmental Health Department stating that in her view granting this application would be likely to add an additional burden and problems to an already challenging area. Notwithstanding that the applicant had placed a number of provisions in their operating schedule, she did not believe that applicant had demonstrated that there were exceptional circumstances to justify departure from the special policy in respect of the Cumulative Impact Area and remained of the view that the application should be refused.
- 6.24 Mr Rolfe stated that he had no wish to make any further comments on behalf of the Kingscliffe Society other than to reiterate their reasons for objection.

- 6.25 Dr Thomas also stated that she had nothing further to add other than that she considered it was important for the Council's licensing objectives to be upheld. As no exceptional reasons for departure from existing policy had been given, the application should be refused.
- 6.26 The Panel withdrew to make their deliberations and on their return the Chair of the Panel read out the following statement:

The Panel has read all the papers including the report and relevant representations and listened to all the arguments and submissions today.

This is an application for a new premises licence within the CIZ and therefore subject to the special policy on cumulative impact as set out in the Statement of Licensing Policy.

Our policy states that applications for new premises licences will be refused following relevant representations. This presumption can be rebutted by the applicant if they can show that their application will have no negative cumulative impact. The special policy will only be overridden in exceptional circumstances.

We have considered the individual circumstances and merits of this application. We have noted the conditions proposed in the operating schedule and at panel today and the amended hours for sale of alcohol. The applicant considers that because of these, this application is unlikely to add to problems of cumulative impact in this area. We have considered these arguments carefully.

However, we do not consider that the applicant has demonstrated there will be no negative cumulative impact, or that there are any exceptional circumstances to depart from the special policy pertaining to the cumulative impact zone. Our policy specifically includes off licences as they can contribute to problems of street drinking, proxy purchasing, dispersal issues, preloading and excessive drinking related disorder. The Matrix re-inforces this with a 'No' for off-licences within the CIZ.

We have heard submissions from the police, licensing authority, local residents and residents association detailing the problems in this area. These include street drinking and associated public nuisance and crime and disorder. We share the concerns of all of those making representations in this respect. We do believe that this premises is likely to add to problems in the area. It will be another premises selling alcohol in an already saturated area increasing the availability of alcohol. Furthermore it is in a particularly prominent and sensitive location in close proximity to a hostel accommodating residents with alcohol related problems.

We have considered the conditions offered by the applicant but do not believe these would be effective in preventing the problems which exist in the area as for example the condition relating to bottle marking will only react to problems after they have arisen.

We do believe that granting this application would undermine the licensing objectives of prevention of crime and disorder, and the prevention of public nuisance. We therefore refuse this application

- 6.27 **RESOLVED** – That the application for a new premises licence under the Licensing Act 2003 for Shiv News, 79-80 St James' Street, Brighton be refused for the reasons set out above.

Note: The Legal Adviser to the Panel confirmed that the applicant would receive a Decision Notice setting out the Panel's decision and advising in respect of their appeal rights.

The meeting concluded at 12.20pm

Signed

Chairman

Dated this

day of