

LICENSING PANEL

(Licensing Act 2003 Functions)

Agenda Item 83

Brighton & Hove City Council

Subject:	<i>Application for a New Premises Licence under the Licensing Act 2003 for The Gallery Bistro, 116 Church Road, Hove, BN3 2EA</i>		
Applicant (s):	Miss Heather Ann Armstrong		
Date of Meeting	27 October 2009		
Report of:	<i>Assistant Director Public Safety</i>		
Contact Officer:	Name:	Emma Bricknell	Tel: 29-4431
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Wards Affected:	Central Hove		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 To determine an application for a New Premises Licence under the Licensing Act 2003 for The Gallery Bistro.

2. RECOMMENDATIONS:

- 2.1 To determine an application for a New Premises Licence under the Licensing Act 2003 for The Gallery Bistro.

2.2.1 The application is for:

A New Premises Licence under the Licensing Act 2003.

The application proposes:

More recently a dress retail shop which has also operated as a restaurant at some time in the past and currently being turned into a cafe' bar style food operation. It's situation in the busy shopping and main road of Hove.

Part P of the application is detailed at Appendix A and the proposed plan is attached at Appendix B.

Summary table of proposed activities -

	Proposed
E Live music	<i>Indoors</i> Every day 12:00 – 24:00 At any time and for short periods on occasions which will be irregular one or more musicians may play for the entertainment of the diners at a fairly low level. A typical example would be Sunday Lunch Jazz
F Recorded Music	<i>Indoors</i> Every day 12:00 – 24:00 Normally played as incidental background music throughout the day there may be occasions say a special function when it is played as Recorded music instead for short periods of time.
H Anything of a similar description within e, f ,or g	<i>Indoors</i> Every day 12:00 – 24:00 There may be occasions when an entertainer, comedian or magician performs a short entertainment, mainly associated with a private function. This will be a short entertainment and not a regular feature.
L Late Night Refreshment	<i>Indoors</i> Every Day 23:00 – 01:00 Food will form an important part of this business and substantial meals will always be available whenever the premise is open.
M Supply of Alcohol	On the Premises Every Day 12:00 – 24:00
O Hours premises are open to public	Every Day 12:00 – 01:00
N Adult entertainment services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children	None

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 This premises does not fall in the Cumulative Impact Area or the Special Stress Areas.
- 3.2.1 **Representations received**
Details of the representations made are notified to applicants on receipt by the Licensing Authority using a pro-forma. A summary appears below:
- 3.2.2 Two representations were received. They were received from a local resident and the Environmental Protection team.
- 3.2.3 Representations received had concerns relating to Prevention of Public Nuisance.
- 3.2.5 Full details of the representations are attached at Appendix C. A map detailing the addresses of the persons who have submitted the representations and their location in relation to the premises is attached at Appendix D.

4. CONSULTATION:

Commentary on licensing policy

- 4.1 The following extracts from Brighton & Hove Licensing Policy are considered relevant to this application and numbered as they appear in the policy:

General

- 1.2 The licensing objectives are:-
 - (a) Prevention of crime and disorder;
 - (b) Public safety;
 - (c) Prevention of public nuisance;
 - (d) Protection of children from harm.
- 1.3 Licensing is about regulating licensable activities on licensed premises, by qualifying clubs and at temporary events. Any conditions attached to various authorisations will be focussed on matters which are in the control of individual licensees and others with relevant authorisations, i.e. the premises and its vicinity.
- 1.5 Each application will be given individual consideration on its merit. Nothing in this policy shall undermine the right of any individual to apply under the terms of the Act for a variety of permissions and to have any such application considered on its individual merits. Similarly, nothing in this policy shall override

the right of any person to make representations on an application or seek a review of a licence or certificate where provision has been made for them to do so in the Act.

- 1.15 Licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned. Licensing is about the control of licensed premises, qualifying clubs and temporary events within the terms of the Act, and the conditions attached to licences, certificates and permissions will be focused on matters which are within the control of the licensee and will centre on the premises themselves and their immediate vicinity. When considering these terms and conditions the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned.

2.5.2 Café Bars

The licensing authority may be prepared to look favourably upon an application for the grant of a licence, subject to the following conditions that will prevent the premises becoming a public house.

The sale of intoxicating liquor and other beverages shall be waiter/waitress service for consumption by persons seated at tables.

Substantial food shall be available at all times.

Licensees should be aware that breach of these conditions is likely to lead to proceedings for revocation of the licence.

2.5.3 Restaurants with outside service

The licensing authority will also consider applications from restaurants that request to serve alcohol to areas adjacent to or immediately outside their premises. In addition to the above conditions for café bars, the licensing authority will require evidence that the applicants have an agreement with the local authority to use the area as defined on a plan provided. The following condition will also apply: -

The sale and supply of alcohol for consumption off the premises shall be restricted to an area licensed by the Local Authority for use of the public highway as shown on the plan deposited and such area shall be defined by a physical barrier acceptable to the licensing authority.

2.5.5 Care, control and supervision of premises

The effective management and supervision of a venue is a key factor in reducing crime and disorder, both within it and outside. The Police will consider the applicants, objecting to the application where appropriate. The Police will suggest crime prevention measures in relation to, for example, the internal layout of the premises, close circuit television, help points, lighting and security staff. The Police may ask for conditions which support such measures to be imposed when planning or licensing applications are granted, e.g. type of licence, capacity, opening time restrictions.

In respect of the prevention of public nuisance

- 4.1 In determining applications for new and varied licences, regard will be had to the location of premises, the type and construction of the building and the likelihood of nuisance and disturbance to the amenity of nearby residents by reason of noise from within the premises, or as a result of people entering or leaving the premises or from individuals or groups of customers gathered outside (e.g. in order to smoke).
- 4.3 Applications for new licences or for the extension in size of licensed premises should not normally be granted if the premises will use amplified or live music and operate within or abutting premises containing residential accommodation except that occupied by staff of the licensed premises. A condition may be imposed on new licences that entertainment noise shall be inaudible in any residence.
- 4.4 Installation of sound limiting equipment and sound insulation may be required to minimise disturbance to the amenity of nearby residents by reason of noise from the licensed premises.
- 4.5 Staggered closing times will not be used to combat binge drinking disorder and antisocial behaviour. Zoning will be avoided. A general principle of later opening so that customers can leave for natural reasons, slowly over longer periods will be promoted, to prevent unnatural concentrations of people. The location of violent attacks, anti-social behaviour and hate crime or related incidents may be used to justify closing times.
- 4.6 Generally permitted temporary activities in the open air including tents and marquees should have a maximum closure hour of 11.00pm. Earlier hours may be imposed in sensitive open spaces or near residential areas.
- 4.7 In determining applications for new licences or extensions in hours or terminal hours of licensed premises, regard will be had

to late night public transport availability and location of taxi ranks to aid dispersal of customers.

- 4.8 Regard will be had to any history or likelihood of nuisance. Generally, favourable consideration will be given to applications for later hours in the city centre and on busy main roads. Powers may be exercised to impose conditions as to hours of opening in order to avoid unreasonable disturbance to residents of the neighbourhood.

Strategic Integration

- 6.5 Specific conditions may be attached to premises licences to reflect local crime prevention strategies. Such conditions may include the use of closed circuit television cameras, the provision and use of shatterproof drinking receptacles, drugs and weapons search policy, the use of registered door supervisors, specialised lighting requirements, hours of opening.
- 6.7 This policy avoids duplication with other regulatory regimes wherever possible.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

The Licensing Act 2003 provides for fees to be payable to the licensing authority in respect of the discharge of their functions. The fee levels are set centrally at a level to allow licensing authorities to fully recover the costs of administration, inspection and enforcement of the regime.

Finance Officer Consulted: Karen Brookshaw Date: 09.10.2009

5.2 Legal Implications:

The licensing authority must act to promote the four licensing objectives which are:

- The prevention of crime and disorder.
- Public safety.
- The prevention of public nuisance.
- The protection of children from harm.

The licensing authority must have regard to its statement of licensing policy and the guidance issued by the Secretary of State in carrying out its functions.

Lawyer Consulted: Rebecca Sidell

Date: 09.10.2009

5.3 Equalities Implications:

Diversity is valued and strong, safe communities are vital to future prosperity. Licensing policy aims to protect children from harm including sale and supply of alcohol to children.

5.4 Sustainability Implications:

Licensing policy aims to prevent public nuisance and develop culture of live music, dancing and theatre.

5.5 Crime & Disorder Implications:

Licensing policy aims to prevent crime and disorder and protect public safety.

5.6 Risk and Opportunity Management Implications:

Licensing is a crucial business and employment opportunity and unnecessary regulation might lead to legal challenge.

5.7 Corporate / Citywide Implications:

The success of the city's tourism strategy requires a safe, attractive city centre to improve competitiveness. The Act may significantly change night time economy.

SUPPORTING DOCUMENTATION

Appendices:

1. Appendix A – Part P of application.
2. Appendix B – Proposed Plan of Premises.
3. Appendix C – Representations.
4. Appendix D – Map of area.

Documents in Members' Rooms

1. Environmental Health & Licensing Service, Brighton & Hove City Council (2008): The Licensing Act 2003 – Brighton & Hove City Council: Statement of Licensing Policy

Background Documents

1. Environmental Health & Licensing Service, Brighton & Hove City Council (2008): The Licensing Act 2003 – Brighton & Hove City Council Statement on Licensing Policy.