

LICENSING PANEL
(Licensing Act 2003 Functions)

Agenda Item 116

Brighton & Hove City Council

Subject: *Application for a Variation of a Premises Licence under the Licensing Act 2003*

Premises address and Trade name: **Burnetts**
62 Preston Street, Brighton, BN1 2HE

Applicant: **Mr Piyush Patel and Mr Nilkanth Patel**

Date of Meeting: **25 January 2010**

Report of: *Assistant Director Public Safety*

Contact Officer: Name: Charlie Taylor Tel: 29-2143
E-mail: charlie.taylor@brighton-hove.gov.uk

Wards Affected: Regency

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

1.1 To determine an application for a Variation of a Premises Licence under the Licensing Act 2003 for Burnetts.

2. RECOMMENDATIONS:

2.1 To determine an application for a Variation of a Premises Licence under the Licensing Act 2003 for Burnetts.

2.2.1 The application is for:

A Variation of a Premises Licence already granted under the Licensing Act 2003.

The application proposes:

“I would like to start from morning 5.30am when I open the shop because I have problem in the morning because nearby they have licence to sell from when they open the shop.”

2.2.2 Part P of the application is detailed at Appendix A

2.3 Summary table of existing and proposed activities:

	Existing	Proposed
M Supply of Alcohol	<p>Off the Premises Monday to Saturday 08:00 – 23:00 Sunday 10:00 – 22:30 Christmas Day 12:00 – 15:00 Christmas Day 19:00 – 22:30 Good Friday 08:00 – 22:30</p>	<p>Off the Premises Every Day 05.30 – 23.00</p>
P Conditions removed as a consequence of the proposed Variation	<p>To remove the embedded restrictions from my Licence at Burnetts:</p> <p>Embedded Restrictions: 1: Permitted Hours Alcohol shall not be sold or supplied except during permitted hours. In this condition, permitted hours means:</p> <ul style="list-style-type: none"> a) On weekdays, other than Christmas Day, 8am to 11pm b) On Sundays, other than Christmas Day, 10am to 10.30pm c) On Christmas Day, noon to 3pm and 7pm to 10.30pm d) On Good Friday, 8am to 10.30pm <p>Restrictions The above restrictions do not prohibit:</p> <ul style="list-style-type: none"> a) During the first twenty minutes after the above hours, the taking of alcohol from the premises, unless the alcohol is supplied or taken in an open vessel 	

<p>P Conditions removed as a consequence of the proposed Variation</p>	<p>b) During the first twenty minutes after the above hours, the taking of alcohol from the premises, unless the alcohol is supplied or taken in an open vessel</p> <p>c) The ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered</p> <p>d) The sale of alcohol to a trader or club for the purposes of the trade or club</p> <p>e) The sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty’s naval, military or air forces: Source Section 60,63,86 Licensing Act 1964</p> <p>2: Alcohol shall not be sold in an open container or be consumed on the licensed premises. Source Section 164 Licensing Act 1964</p> <p>3: Recorded Music Premises licensed for the sale and supply of alcohol may provide, at any time, regulated entertainment by the reproduction of wireless, including television broadcast and of public entertainment by way of music and singing only which is provided solely by the reproduction of recorded sound. Source Section 182 Licensing Act 1964</p>
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2.4 Existing licence attached at Appendix B.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

3.1 Cumulative Impact: The premises falls within the Cumulative Impact Area (“The Area”) in the Brighton city centre (see paragraphs Prevention of Crime and Disorder 2.4.10 – 2.4.14 and Appendices C - E).

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 One representation was received. It was received from Sussex Police.

3.2.3 The Representation received had concerns relating to Prevention of Crime and Disorder and Protection of Children from Harm.

3.2.4 Full details of the representation is attached at Appendix F. A map detailing the location of the premises is attached at Appendix G.

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.

In respect of the prevention of crime and disorder

- 2.2 The licensing authority acknowledges that training and good management play a key part in preventing alcohol and drug related crime. The authority recommends that all licensees of on-licensed premises attend training programmes which will raise their awareness of the issues relating to drugs and violence in licensed premises, and that suitable training be extended to all bar staff and door staff so that drug dealers and users will be deterred from using licensed premises for illegal purposes and that incidents of violence in licensed premises will be reduced. Licensees are also encouraged to attend training programmes to help identify children at risk and issues of basic child protection.
- 2.3 It is expected that the designated premises supervisor (DPS) will spend a significant amount of time on the premises. When not on the premises it will be essential that the DPS is contactable, particularly should problems arise with the premises.
- 2.4 Cumulative impact – the licensing authority may receive representations from either a responsible authority or an interested party that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives. This should not, however, be confused with ‘need’ which relates more to the commercial demand for a particular type of premises. The issue of ‘need’ is therefore a matter for the market to decide and can, in some circumstances, be a matter for planning consideration; need therefore does not form part of this licensing policy statement.
- 2.4.1 Special Policy - 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.
- 2.4.2 The licensing authority after careful consideration has determined that the concentration of licensed premises in a small area of the city centre is causing problems of crime and disorder and public nuisance, and that therefore an approach to Cumulative Impact is necessary as part of its statement of licensing policy. This special policy was adopted for inclusion within the statement of licensing policy by Council on 13 March 2008.
- 2.4.3 This special policy will refer to a Cumulative Impact area (“the Area”) in the Brighton city centre, a detailed plan of which is attached at **Appendix C** of the Statement of Licensing Policy (SoLP).

- 2.4.4 The effect of this special policy is that applications for new premises licences or club premises certificates within the Area, or variations which are likely to add to the existing Cumulative Impact, will normally 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.
- 2.4.5 Any variation application will potentially come within this special policy, including those for extensions of hours, subject always to an applicant satisfying the authority that there will be no adverse effect on Cumulative Impact.
- 2.4.6 This special policy also applies to all new premises licences and club premises certificates, for example pubs, off-licences, restaurants and take-away establishments.
- 2.4.7 The presumption of refusal does not relieve responsible authorities or interested parties of the need to make a relevant representation. If there are no representations the licensing authority must grant the application in terms consistent with the operating schedule submitted.
- 2.4.8 Furthermore, this special policy is not absolute. Upon receipt of a relevant representation, the licensing authority will always consider the circumstances of each case and whether it is justified in departing from its special policy in the light of the individual circumstances of the case. If an application is unlikely to add to the Cumulative Impact of the Area, it may be granted. The Impact can be expected to be different for premises with different styles and characteristics. For example, while a large nightclub or high capacity public house might add to problems of Cumulative Impact, a small restaurant or theatre may not.
- 2.4.9 If the licensing authority decides that an application should be refused, it will still need to show that the grant of the application would undermine the promotion of one of the licensing objectives and that conditions would be ineffective in preventing the problems involved.
- 2.4.10 Special Stress Areas – **Appendix D** of the SoLP details two areas of the Brighton city centre which border the Cumulative Impact area at **Appendix C** and which are deemed areas of special concern in terms of the levels of crime and disorder and public nuisance experienced within them.
- 2.4.11 While it is not considered appropriate at this stage to include these areas within the main impact area as such, these Special Stress Areas (SSAs) are of concern to the licensing authority

because of the relatively high levels of crime and disorder and nuisance experienced.

2.4.12 New and varied applications for premises and club premises certificates within SSAs will not be subject to the presumption of refusal, but operators will be expected to pay special attention when drawing up their operating schedules and to make positive proposals to ensure that their operation will not add to the problems faced in these areas. **Appendix E** of the SoLP sets out a list of potential measures the licensing authority considers may be appropriate. These may be more or less appropriate depending upon the style of operation applied for.

2.4.13 On receipt of any application in SSAs, where a relevant representation has been made, the licensing authority will scrutinise the application carefully and will look at the measures proposed in the operating schedules and compare them to the measures set out in **Appendix E**. Where discretion has been engaged, those applications which fall short may be refused or conditions applied to comply with policy measures.

2.4.14 The Licensing Authority will keep the Cumulative Impact Area and Special Stress Areas under review. Should the authority find that problems of crime and disorder or nuisance are not improving, or are worsening; the Special Policy will be reviewed with a view to bringing the SSAs into the Cumulative Impact Area. If it is found that the above problems are receding the Special Policy may be reviewed with a view to revising the areas' boundaries.

2.5.1 Diversity of premises

This attempts to ensure that there is a mix of the different types of licensed premises, particularly in areas where there is a high density of such premises. It will provide resilience against changing trends and attract a more diverse range of customers from different age groups, different communities of interest and with different attitudes to alcohol consumption. It gives potential for positively changing the ambience of the city or an area of it. This in turn may have a positive effect in reducing people's fear of crime and in increasing the number of evening visitors to the city centre. The Community Safety Strategy recognises that too many single uses in a confined area and patrons turning out onto the streets at the same time, may create opportunities for violent crime and public disorder and therefore encourages mixed use venues, varying hours of business and a wider age balance.

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.

- 2.6 Shops, stores and supermarkets which provide alcohol for consumption off the premises: the normal scenario will be to provide for sales of alcohol at any time when the retail outlet is open for shopping unless there are very good reasons for restricting those hours.
- 2.8 Enforcement issues will be considered in the light of any relevant enforcement policies and close links will be sought between all enforcing authorities, e.g. through the use of intelligence sharing and strategy groups. Such protocols may lead to the targeting of agreed high risk and problem premises whilst permitting a lighter touch approach in respect of well run premises.

In respect of the protection of children from harm

- 5.1 Licensees should note the concern of the authority that drink related disorder frequently involves under 18's. To prevent illegal purchases of alcohol by such persons, the committee recommend that all licensees should work with a suitable 'proof of age' scheme and ensure that appropriate identification is requested prior to entry and when requesting alcohol, where appropriate. Appropriate forms of identification are currently considered to be those recommended by police, trading standards officers and their partners in the licensing strategy group.
- 5.2 It is the committee's expectation that all staff responsible for the sale of intoxicating liquor receive information and advice on the licensing laws relating to children and young persons in licensed premises. Licensed premises staff are required to take reasonable steps to prevent under age sales. The licensing authority will not seek to limit the access of children to any premises unless it is necessary for the prevention of physical, moral or psychological harm to them.
- 5.4 The licensing authority will not seek to require that access to any premises is given to children at all times – under normal circumstances this will be left to the discretion of the licensee. The following areas give rise to concern in respect of children, who will normally be excluded from premises:-

- where there have been convictions for serving alcohol to minors or with a reputation for underage drinking;
- with a known association with drug taking or dealing;
- where there is a strong element of gambling on the premises;
- where entertainment of an adult or sexual nature is commonly provided;
- where premises are used primarily or exclusively for the sale and consumption of alcohol and there is little or no seating for patrons.

Options may include:-

- limitations on the hours when children may be present;
- age limitations (below 18);
- limitations or exclusions when certain activities are taking place;
- requirements for an accompanying adult;
- full exclusion of people under 18.

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: 08.01.2010

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: 08.01.2010

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 the Application.
2. Appendix B – Part A of Premises Licence.
3. Appendix C – Brighton & Hove City Council – Cumulative Impact Area.
4. Appendix D – Brighton & Hove City Council – Special Stress Area.
5. Appendix E – Measures to be considered in SSAs.
6. Appendix F – Representation.
7. Appendix G – 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.

