

# LICENSING PANEL

## (Licensing Act 2003 Functions)

**Agenda Item 109**

Brighton & Hove City Council

<b>Subject:</b>	<b>Application for a Variation of a Premises Licence under the Licensing Act 2003</b>		
<b>Premises:</b>	<b>Freemasons, 38-39 Western Road, Hove, BN3 1AF</b>		
<b>Licence Holder:</b>	<b>Zelgrain Ltd</b>		
<b>Date of Meeting:</b>	<b>5 January 2012</b>		
<b>Report of:</b>	<b>Head of Regulatory Services</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Becky Pratley</b>	<b>Tel: 292143</b>
		<b>Jim Whitelegg</b>	<b>292438</b>
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<b>Ward(s) affected:</b>	<b>Brunswick and Adelaide</b>		

### FOR GENERAL RELEASE

#### 1. PURPOSE OF THE REPORT:

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

#### 2. SUMMARY OF THE APPLICATION PROCESS:

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

- 2.2 The application is for:

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

The application proposes:

An alteration in the hours of trading of the premises – to permit an extra hour for the sale of alcohol each day and on certain public holidays and other events and to include provision for dancing.

- 2.2.2 Part P of the application is detailed at Appendix A.

2.3 Summary table of existing and proposed activities.

	<b>Existing</b>	<b>Proposed</b>
<b>E Live music</b>	<p>Indoors Monday – Wednesday 10.00 – 00.00 Thursday – Saturday 10.00 – 01.00 Sunday 12.00 – 00.00 Until 01.00 in the morning following every Christmas Eve and to reflect New Year’s Eve/Day Hours.</p>	<p>Indoors Monday – Wednesday 10.00 – 01.00 Thursday – Saturday 10.00 – 02.00 Sunday 12.00 – 01.00 Together with an additional hour on all statutory bank holiday weekends (Friday, Saturday, Sunday and Monday) and on the Thursday before Good Friday, Christmas Eve &amp; St Georges &amp; 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.</p>
<b>F Recorded Music</b>	<p>Indoors Monday – Wednesday 10.00 – 00.00 Thursday – Saturday 10.00 – 01.00 Sunday 12.00 – 00.00 Until 01.00 in the morning following every Christmas Eve and to reflect New Year’s Eve/Day Hours.</p>	<p>Indoors Monday – Wednesday 10.00 – 01.00 Thursday – Saturday 10.00 – 02.00 Sunday 12.00 – 01.00 Together with an additional hour on all statutory bank holiday weekends (Friday, Saturday, Sunday and Monday) and on the Thursday before Good Friday, Christmas Eve &amp; St Georges &amp; 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.</p>

<p><b>I Provision of facilities for making music</b></p>		<p>Indoors  Monday – Wednesday  10.00 – 01.00  Thursday – Saturday  10.00 – 02.00  Sunday  12.00 – 01.00  Together with an additional hour on all statutory bank holiday weekends (Friday, Saturday, Sunday and Monday) and on the Thursday before Good Friday, Christmas Eve &amp; St Georges &amp; 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.</p>
<p><b>J Provision of facilities for dancing</b></p>		<p>Indoors  Monday – Wednesday  10.00 – 01.00  Thursday – Saturday  10.00 – 02.00  Sunday  12.00 – 01.00  Together with an additional hour on all statutory bank holiday weekends (Friday, Saturday, Sunday and Monday) and on the Thursday before Good Friday, Christmas Eve &amp; St Georges &amp; 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.</p>

<p><b>K Provision of facilities for entertainment of a similar description to that falling with in I or J</b></p>		<p>Indoors  Monday – Wednesday  10.00 – 01.00  Thursday – Saturday  10.00 – 02.00  Sunday  12.00 – 01.00  Together with an additional hour on all statutory bank holiday weekends (Friday, Saturday, Sunday and Monday) and on the Thursday before Good Friday, Christmas Eve &amp; St Georges &amp; 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.</p>
<p><b>L Late Night Refreshment</b></p>	<p>Indoors  Monday – Wednesday  23.00 – 00.00  Thursday – Saturday  23.00 – 01.00  Sunday  23.00 – 00.00  Until 01.00 in the morning following every Christmas Eve and to reflect New Year’s Eve/Day Hours.</p>	<p>Indoors  Sunday – Wednesday  23.00 – 01.00  Thursday – Saturday  23.00 – 01.00  Together with an additional hour on all statutory bank holiday weekends (Friday, Saturday, Sunday and Monday) and on the Thursday before Good Friday, Christmas Eve &amp; St Georges &amp; 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.</p>

<b>M Supply of Alcohol</b>	On and Off the premises Monday – Wednesday 10.00 – 00.00 Thursday – Saturday 10.00 – 01.00 Sunday 12.00- 02.00 Until 01.00 in the morning following every Christmas Eve and to reflect New Year’s Eve/Day Hours.	On and off the Premises Monday – Wednesday 10.00 – 01.00 Thursday – Saturday 10.00 – 02.00 Sunday 12.00 – 01.00 Together with an additional hour on all statutory bank holiday weekends (Friday, Saturday, Sunday and Monday) and on the Thursday before Good Friday, Christmas Eve & 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.
<b>O Hours premises are open to public</b>	Monday – Thursday 10.00 – 01.00 Friday – Saturday 10.00 – 02.00 Sunday 12.00 – 02.00 Until 02.00 in the morning following every Christmas Eve. To reflect existing New Year’s Eve/Day hour	Sunday – Wednesday 10.00 – 02.00 Thursday – Saturday 10.00 – 03.00 Together with an additional hour on all statutory bank holiday weekends (Friday, Saturday, Sunday and Monday) and on the Thursday before Good Friday, Christmas Eve & 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.
<b>P Conditions removed as a consequence of the proposed Variation</b>	All ‘embedded conditions’	

2.4 Existing licence attached at Appendix C

**3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**

3.1 Special Stress Area: The premises falls within one of the Special Stress Areas. These areas are deemed areas of special concern in terms of the levels of crime, disorder, and public nuisance experienced within them. (See 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 Six representations were received. They were received from a local resident, Resident's Associations and Sussex Police.

3.2.3 Representations received had concerns relating to the Prevention of Crime and Disorder, Public Safety and the Prevention of Public Nuisance.

3.2.4 A representation was received from the Environmental Protection team relating to the Prevention of Public Nuisance. The representation has now been withdrawn following works carried out by the applicant to the satisfaction of the Environmental Protection Team.

3.2.5 Full details of the representations and agreements are attached at Appendix F. A map detailing the address of the person who has submitted the representation and their location in relation to the premises is attached at Appendix G. Please note that Relevant Authorities and Residents' Associations are not included.

## 4. CONSULTATION

Commentary on Licensing Policy

4.1 The following extracts from Brighton & Hove City Council Statement of 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 focused on matters which are within 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

1.10.4 The licensing authority's preferred position is to ensure planning permission is in place before an application for a licence is made.

## **In respect of the prevention of crime and disorder**

- 2.1 The licensing authority acknowledges that training and good management play a key part in preventing alcohol and drug related crime. The authority expects 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 supervisors 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. It is the duty of the designated premises supervisor (DPS) to train staff on induction concerning conditions on their premises licence.
- 2.2 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 and that staff are authorised by the DPS.
- 2.4 The location of violent attacks, anti-social behaviour and hate crime or related incidents may be used to justify closing times.
- 2.5 Measures put in place should support the intentions of Operation Marble (police operational order refers), which aims to prevent incidents of crime and disorder within the night time economy, at weekends. Operation Marble operates with a view to minimising the risk to the public of being a victim of public place violent crime; to reduce incidents of violent crime and public disorder within the City Centre; to deal positively with offences and offenders; to secure and preserve evidence which will assist in the prosecution of offenders and to support the night time economy and the responsibly run businesses within it.

## **Special Stress**

- 2.6.10 Special Stress Areas – Appendix D from 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.
- 2.6.11 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.
- 2.6.12 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 F from 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.

2.6.13 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 from the SoLP. Where discretion has been engaged, those applications which fall short may be refused or conditions applied to comply with policy measures.

2.6.14 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.

## **2.7 The Licensing Authority will support:**

2.7.1 Diversity of premises: ensures that there is a mix of the different types of licensed premises and attracts a more diverse range of customers from different age groups, different communities and with different attitudes to alcohol consumption. It gives potential for positively changing the ambience of the city or an area of it. This will 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 supports: mixed use venues encouraging a wider age balance.

2.7.2 Favourable consideration will be given to promoting the city's cultural quarter, live entertainment in pubs, food led operations, developing LGBT and other communities of interest venues, particularly around St James's Street, promoting a family leisure area on the sea front with a more adult leisure centre at night.

2.7.6 Care, control and supervision of premises:

The Licensing authority supports the Business Crime Reduction Partnership and other approved schemes. Where appropriate, premises licence holders should be members of the BCRP for the deterrence to violent crime that such membership provides. The BCRP NightSafe radio scheme is normally expected as an operational requirement for city centre bars, clubs and pubs and is an example of good practice in achieving the aim of reducing crime and disorder and improving public safety. Well managed pub-watch schemes provide information exchange between the premises licence holders and responsible authorities that reduce and deter violent crime and disorder. The council will support a responsible licensing scheme.

2.7.7 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 may suggest crime prevention measures in relation to, for example, the internal layout of the premises, closed-circuit television, help points, lighting and security staff. The police may ask for conditions which support such measures to be imposed when licensing applications are granted, e.g. type of licence, capacity, operating hours restrictions.



2.7.11 High volume vertical drinking establishments (HVVD's) may, where necessary and appropriate, have conditions attached relating to: a prescribed capacity, the ratio of chairs and tables to be provided for customers based on capacity and the presence of SIA registered security teams.

2.7.12 Enforcement will be achieved by the enforcement policy.

### **In respect of Public Safety**

- 3.1 Club owners and promoters will be expected to have regard to "Safer Clubbing: guidance for licensing authorities, club managers and promoters". The licensing authority will seek to ensure that licensed premises are designed and run in a way which maximises the safety of customers and staff. In order to minimise disputes and the necessity for hearings, it would be sensible for applicants to consult with all responsible authorities when operating schedules are being prepared.
- 3.2 Normally in the city centre, pubs and clubs will be expected to operate using polycarbonate or toughened/shatterproof glass.
- 3.3 Conditions will be imposed in accordance with operating schedules to protect public safety including where justified:-
- (a) provision of close circuit television and panic buttons.
  - (b) use of shatterproof drinking vessels, bottles requiring use of toughened glass or plastic should normally be required unless applicants can show exceptional reasons (recognised by Community Safety Strategy).
  - (c) use of door supervisors, licensed by the Security Industry Authority (recognised by the Community Safety Strategy).
  - (d) requirement of a minimum of a licensed door supervisor for every 100 customers in nightclubs and large city centre pubs or as indicated by risk assessment.
  - (e) occupant capacity conditions will be applied where appropriate.
  - (f) the provision of designated and suitably trained first aiders
- 3.4 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 as recognised by the Community Safety Strategy and Policing Strategy. Applicants may be required to consult local transport operators and are encouraged to support the use of public transport through the provision of advice, contact details, provision of dedicated taxi phones etc.
- 3.5 Policy recognises that the numbers of late night revellers can lead to service delivery pinch-points, for example at city centre taxi ranks. Frustration and restlessness in queues can lead to anti-social behaviour and public disorder which can be controlled by, for example, taxi marshalling systems. Operators whose customers contribute to the night-time demand for taxis may wish to consider assisting in the provision of resources for such systems or similar schemes.

## **In respect of the prevention of public nuisance**

- 4.1 Planning, building control and licensing will be properly separated to avoid duplication and inefficiency. Granting of licences will not relieve applicants of the need to apply for planning permission or building control consent and there is an expectation that these issues will have been explored before licensing applications are submitted. Applicants are recommended to obtain correct planning consents prior to applying for a licence to avoid potentially inoperative licences.
- 4.2 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, 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. Noise emanating from within licensed premises should not normally be audible outside.
- 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.
- 4.6 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.
- 4.7 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, on busy main roads and in the central leisure area. Powers may be exercised to impose conditions as to hours of opening in order to avoid unreasonable disturbance to residents of the neighbourhood. Licensed premises in residential neighbourhoods will normally have a terminal hour no later than 2330. In mixed neighbourhoods they will normally have a terminal hour of no later than 0200 hours to counter noise disturbance to residents as informed by the health impact assessment and requested by Licensing Strategy Group.
- 4.8 While each application will always be considered on its merits, as an indication the St James's Street area and the North Laines/area will be considered residential neighbourhoods, and East Street a mixed neighbourhood.
- 4.9 Reasonable controls are available to all premises operators to minimise the impact of noise from customers outside. The council's Environmental Health Department has issued guidance on a number of steps that can be taken in this respect which are endorsed by this policy (see 4.10 below).

## 4.10 Smoking Advice

Premises licence holders will be expected to:

- Develop a management plan on how to manage smoking on your premises and ensure that all staff are aware of the contents of this plan, and that it is effectively implemented. Noise from people smoking and talking can be intermittent, vary in character and volume and be intrusive. An effective smoking management plan will help prevent neighbours being disturbed.
- Comply with any planning conditions restricting the use of outdoor areas.
- Ensure that any structures used by smokers comply with the design criteria detailed in the Heath Act 2006 and that any structures, awnings, retractable canopies, etc have the relevant planning permission.
- Ensure any new lighting to outdoor areas must be designed so as not to cause a light nuisance to neighbours and again have the relevant planning permission and building control consent.
- Ensure that the conditions on the premises licence are complied with. There may be conditions restricting the hours of use of gardens and outdoor areas. Having reviewed the contents of the premises licence you may find it necessary to request a variation of your licence.
- Licence tables and chairs on the Public Highway under the provisions of the Highways Act 1980. These licences may have conditions restricting the times that the area can be used.
- Ensure drinks, glasses and bottles are not taken onto the highway unless there is a tables and chairs licence permitting use. A system should be adopted to prevent theft and 'spiking' of drinks, and reminding customers not to leave unattended items.
- Discourage smokers remaining in gardens and outdoor areas and determine terminal hours.
- Discourage smokers remaining outside by removing/disabling tables and chairs or prohibiting their use after a certain time. Lights and heaters will also be turned off.
- Introduce a system that after a certain time the number of smokers outside are restricted to a maximum number. Staff will be needed to manage this restriction.
- Employ staff and/or SIA registered door supervisors to manage doors and control customers and smokers entering and leaving the premises. Staff positioned on the doors can help to encourage customers not to cause a noise problem. It may be that staff are required to manage doors after a certain time, particularly during the hours when neighbouring residents are trying to sleep.
- Ensure door supervisors maintain order outside venues and protect customer safety. BCRP supports the use of Night Safe. Radio net and other pager systems and pub watch schemes can be used to provide for rapid police response and alert other venues where customers and staff are endangered.
- Position signs to remind customers that the premises is in an area where people live. It is not always obvious in busy commercial streets with flats above. By changing the design and wording of signs customers do not forget. Signs can be located in and outside the premises and on tables.
- Use CCTV to manage outside areas.

4.11 Licensed premises should normally display prominent, legible signs at exits reminding customers to leave in a quiet, peaceful, orderly manner.

## **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, use of the NightSafe radio system or accredited scheme, 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.
- 6.6 The licensing authority will have regard to the need to disperse people quickly and safely from the city centre to avoid concentrations which may produce disorder and disturbance.
- 6.8 Other regulatory regimes  
This policy avoids duplication with other regulatory regimes wherever possible.

## **In respect of Live music, Dancing and Theatre**

- 7.1 This policy recognises the need to encourage live music, dancing and theatre for the wider cultural benefits of the community generally. In addressing such issues the potential for limited disturbance in neighbourhoods will always be carefully balanced with these wider benefits, particularly for children. The impact of licensing on regulated entertainment, particularly live music and dancing, will be monitored. Where indications are that such events are being deterred by licensing requirements, the policy will be revisited with a view to investigating how such situations might be reversed.
- 7.2 The Licensing Committee represents the general interests of a community in determining what conditions should be attached to licences and certificates as a matter of necessity for the promotion of the licensing objectives. All members of the Licensing Committee will be trained on Licensing Act 2003 and S182Guidance. The Licensing authority is aware of the need to avoid measures which deter live music, dancing and theatre - such as imposing indirect costs out of proportion to the income of the licence holder and to the risks presented. Only necessary, proportionate and reasonable licensing conditions should impose any restrictions on such events.
- 7.3 The licensing committee will support the cultural zones, outdoor eating areas, food led operations, community pubs, live entertainment and protect living conditions in mixed use areas.

## **5. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

- 5.1 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: 14.12.2011

### 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: 14.12.2011

### 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 Public Health Implications:

Licensing Policy aims to implement and maintain risk and protective factors regarding the misuse of alcohol and drugs.

### 5.8 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 SSA's
6. Appendix F – Representations and Withdrawn 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.