

Licensing Panel (Licensing Act 2003 Functions)

Agenda Item

Brighton & Hove City Council

Subject:	Application for a Variation of a Premises Licence under the Licensing Act 2003		
Premises:	Al Duomo 6-7 Pavilion Buildings Brighton BN1 1EE		
Applicant:	Ideal Gold Restaurants		
Date of Meeting:	20 August 2013		
Report of:	Head of Regulatory Services		
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Wards Affected:	Regency		

FOR GENERAL RELEASE/ EXEMPTIONS

1. SUMMARY AND POLICY CONTEXT:

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

2. RECOMMENDATIONS:

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

2.2.1 The application is for:

A Variation of a Premises Licence under the Licensing Act 2003

The application proposes:

We are a family business and have been operating in Brighton for 22 years, we see our business is ever changing and we are looking at offering seated dining & drinking opportunities later outside in the future, especially at weekends, (when we do cater for many parties) which will increase jobs and the opportunities of our business to ride out the present market. Following meetings and correspondence with Police Licensing, I am proposing the following variation to the existing

licence: To increase the current outside seating area; to extend the hours for the supply of alcohol in the outside seating area (note the overall hours for the supply of alcohol and all other licensable activities are NOT being extended. To remove some existing conditions on the licence to completely rewrite the licence conditions, with the conditions enclosed as new licence conditions. The conditions have provisionally been agreed with Police Licensing. The intended result is a new, more comprehensive, up to date and easy to understand licence with everything in order and in the correct sequence.

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

2.3 Summary table of existing and proposed activities

Proposed	The outside seating area is restricted for use between the hours of: Monday to Wednesday 07:00 – 00:30; Thursday to Saturday 07:00 – 01:30 and Sunday 07:00 – 00:30
P Conditions removed as a consequence of the proposed Variation	See Appendix C

2.4 Existing licence attached at Appendix D

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

3.1 Cumulative Impact: The premises falls within the Cumulative Impact Area (“The Area”) (see paragraphs Prevention of Crime and Disorder 2.6 – 2.6.15 and Appendix 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 a local business

- 3.2.3 Representation received had concerns relating to Prevention of Crime and Disorder and Cumulative Impact
- 3.2.4 A representation was received from the Environmental Protection team which included conditions relating to Cumulative Impact and Prevention of Public Nuisance. The representation was withdrawn as the applicant agreed to the conditions and amended the operating schedule accordingly.
- 3.2.5 Full details of the representation and agreement are attached at Appendix F. A map of the location of the premises and showing the representation within the 'vicinity' in its pre-S182 Guidance 25/4/12 meaning is at Appendix G. Please note that Responsible Authorities, Residents Associations and reps further afield are not shown on the map but can be found at Appendix F.

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 area.
- 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 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.

Cumulative Impact

- 2.6 Cumulative impact – the licensing authority may receive representations from either a responsible authority or other persons 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.
- 2.6.1 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.
- 2.6.2 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. The first Special Policy and Cumulative Impact Zone (CIZ) and Special Stress Area (SSA) were adopted in March 2008. Since that date, the licensing authority has kept the CIZ and SSA under review with the proviso that 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 SSA into the CIZ.
- At Licensing Committee on 10th February 2011, committee called for a report on the review of the licensing policy following consultation with ward Councillors and the Police, reviewing evidence, having regard to resident concerns with a view to possible inclusion of special stress areas in the CIZ. The merits of a matrix approach to licensing decisions would also be explored. On the 23rd June 2011 the Licensing Committee received a report and authorised officers to initiate consultation regarding a review of the CIZ.
- 2.6.3 On the 15th December 2011 Full Council resolved to expand the CIZ and the special stress area. The new CIZ covers 1.5% of the administrative area of Brighton & Hove City Council.
- 2.6.4 This special policy will refer to a Cumulative Impact Zone (“the CIZ”) in the Brighton city centre, a detailed plan of which is attached at Appendix D from the Statement of Licensing Policy (SoLP).

- 2.6.5 The special policy will only be overridden in exceptional circumstances. 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 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.
- 2.6.6 Any variation application including Minor Variations 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.
- 2.6.7 This special policy also applies to all new premises licences and club premises certificates, for example pubs, restaurants and take-away establishments. Off licences also come within this policy as they can contribute to problems of street drinking, proxy purchasing, dispersal issues, preloading and excessive drinking and related disorder.
- 2.6.8 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.
- 2.6.9 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 there are exceptional circumstances to justify 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, pub or theatre may be considered exceptional circumstances. In relation to this, the licensing authority considers it is more proportionate to look favourably upon a pub wanting to open until 11pm or a restaurant until 12 midnight as it has emerged from all the evidence and consultation responses that these type of premises operating within these hours are unlikely to add to cumulative impact in the area. The fact that a premises will be/is exceptionally well managed with a well qualified applicant, or that there are no residential premises nearby, will not be considered exceptional.
- 2.6.10 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.

2.6.15 The Licensing Authority will keep the Cumulative Impact Zone and Special Stress Area 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.

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. A "matrix" approach to licensing decisions has been adopted and is set out below.

Matrix approach for licensing decisions in a Statement of Licensing Policy

	Cumulative Impact Area	Special Stress Area and London Road	Mixed Commercial and Residential Areas (streets containing shopping parades)	Residential Area (mainly residences in street)	Marina
Restaurant	Yes (midnight)	Yes (2am)	Yes	Yes (11.30pm)	Yes
Late Night Takeaways	No	Yes (midnight)	Yes (midnight)	Yes (midnight)	Yes
Night Club	No	No	Yes (3am)	No	Yes
Pub	Yes (11pm)	Yes (11pm)	Yes (3am)	Yes (11pm, midnight Friday and Saturday)	Yes
HVVD (Super pub)	No	No	No	No	Yes
Non-alcohol lead (e.g. Theatre)	Yes (favourable)	Yes (favourable)	Yes (favourable)	Yes	Yes
Off-licence	No	No	No	Yes (8pm)	Local shops only
Members Club	Yes (<100)	Yes (<100)	Yes	Yes (11pm and midnight Friday and Saturday)	Yes

Notes on matrix

Subject to the following, the policy, as represented in the matrix, would be strictly adhered to

- 1) Each application would be considered on individual merit
- 2) Departure from policy is expected only in exceptional circumstances
- 3) Exceptional circumstances will not include quality of management or size of venue except where explicitly stated in policy matrix
- 4) Exceptional circumstances may include: close consultation with Sussex Police and the Licensing Authority, meeting requirements of responsible authorities, an appropriate corporate social responsibility policy, community contribution to off set impact (such as financial contribution to infrastructure), community support, alcohol sale ancillary business activity (demonstrable to responsible authorities and licensing authority, for instance by licence condition allowing authorised officers access to sales accounts), BCRP membership
- 5) The following licensing activities are encouraged and valued by the licensing authority: outdoor regulated entertainment, community based street parties, members clubs, traditional pubs outside the city centre and non-alcohol led licensable activities, particularly within city centre
- 6) Shatterproof drinking receptacles will normally be required by licence condition in alcohol led establishments in the city centre
- 7) Outdoor events will be supported where arranged through the council's event planning process
- 8) Favourable consideration will be given to residential need
- 9) Favourable consideration will be given to local businesses properly engaged with the local licensing authority and responsible authorities

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.

2.7.4 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 may 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.

2.7.5 Geographical spread

Spreading the siting of large venues (those with a capacity in excess of 250 people) across the city reduces the problems of dispersing large numbers of people leaving premises in close proximity at the same time. Taxi and bus queues can be flash points for public disorder and violence. A good geographical spread coupled with increased taxi ranks and bus stops near venues reduces waiting time and the potential for crime and disorder. Food led operations are promoted.

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.

2.7.12 Enforcement will be achieved by the enforcement policy.

2.7.13 Any enforcement checks will include outside drinking areas, looking particularly at noise, and customer smoking areas.

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.

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: Jeff Coates

Date: 31.07.2013

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: 31.07.2013

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 – Proposed Plan of Premises
3. Appendix C – Conditions to be removed from Premises Licence
3. Appendix D – Part A of Premises Licence
4. Appendix E – Brighton & Hove City Council – Cumulative Impact Zone
5. Appendix F – Representation and agreement
6. Appendix G – Map of area

Documents in Members' Rooms

1. Brighton & Hove City Council, Licensing Act 2003: Statement of Licensing Policy 2011, as amended 20 December 2011.

Background Documents

1. Brighton & Hove City Council, Licensing Act 2003: Statement of Licensing Policy 2011, as amended 20 December 2011.