

Brighton & Hove City Council

For general release

Meeting: Licensing Sub-Committee

Date: 22nd August 2006

Report of: Assistant Director – Public Safety

Subject: Application to vary a premises licence under the Licensing Act 2003 – Cacau, 128 Western Road, Brighton

Applicant: Corleone of Sicilia Ltd, 128 Western Road, Brighton

Ward(s) affected: Regency

1. Purpose of the report

1.1 To determine an application to vary a premises licence.

2. Summary of application

2.1 The application is for:

A variation for the premises licence already granted under 'grandfather rights'.

The variations proposed:

- To remove the embedded restrictions from the existing licence
- To change the nature of the premises to a café/bar style of operation
- To extend operating hours and the hours for the sale of alcohol
- To permit the playing of recorded and live music

2.2 Summary table of existing and proposed activities

	Existing	Proposed
E Live music	Licensing Act 1964 Sec 182 Two performers	Indoors. Although asked for at any time in reality live music played by 2 or 3 musicians on some evenings between 21.00 and 01.00 is likely to be what is required. Seasonal variation: New Years Eve Every day 10.00 – 02.00

F Recorded Music	Licensing Act 1963 sec 182 music provided by recorded sound ancillary to alcohol sales	Indoors. Recorded music played through a standard amplification system mainly kept as background but may be at a higher volume if a DJ is performing this will be restricted to between 21.00 and 01.00 Seasonal variation: New Years Eve Every day 10.00 – 02.00
H Anything of a similar description within e, f		Indoors. Recorded music played by a DJ or the live musicians which will consist of not more than 3 players. In keeping with the style of operation where customers are expected to be eating there will not be excessively loud music played. Seasonal variation: New Years Eve Every day 21.00 – 01.00
I Provision of facilities for making music		Indoors. An in house amplification system and associated equipment. Live music will be played on the players' own instruments. Only background music as stated above except when entertainers are also performing. Seasonal variation: New Years Eve Every day 10.00 – 02.00
L Late Night Refreshment		Indoors and outdoors. Substantial food will always be available on the premises and there is a possible limited take away service to be provided. Seasonal variation: New Years Eve Every day 23.00 – 02.30

M Supply of Alcohol	Alcohol shall not be sold or supplied except during permitted hours. In this condition, permitted hours means: Mon – Sat 10.00 – 00.00 Sunday 12.00 – 23.30 Christmas Day 12.00 – 23.30 Good Friday 12.00 – 23.30 New Years Eve 10.00 (12.00 if a Sunday) – 0.00 New Years Day 00.00 – 00.00 (23.30 if a Sunday)	On and off the premises. Seasonal variation: New Years Eve. Every day 10.00 – 02.00.
O Hours premises are open to public		Every day 10.00 – 02.30.
P Conditions removed as a consequence of the proposed Variation	All embedded restrictions carried over from the Justices Licence	

3. Representations received

- 3.1 Details of the representations made are notified to applicants on receipt by the Licensing Authority using a pro-forma. A summary appears below:

A substantial number of relevant representations have been received from residents living in the vicinity of the premises and the ground of public nuisance from noise should the application be granted.

4. 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.

- 1.4 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

1.14 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 public nuisance

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, or as a result of people entering or leaving the premises.

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.

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. 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.

Case Officer: Keith Mitchell

