

**BRIGHTON & HOVE CITY COUNCIL**  
**LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)**

**10.00am 25 NOVEMBER 2020**

**VIRTUAL**

**MINUTES**

**Present:** Councillor ; Simson, Appich and O'Quinn

**Officers:** Mark Savage-Brookes (Technical Officer), Annie Sparks (Regulatory Services Manager), Rebecca Sidell (Legal Advisor), Gregory Weaver (Democratic Services Officer)

**PART ONE**

**28 TO APPOINT A CHAIR FOR THE MEETING**

28.1 Councillor O'Quinn was appointed Chair for the meeting.

**29 PROCEDURAL BUSINESS**

**29a Declaration of Substitutes**

29.1 There were none..

**29b Declarations of Interest**

29.2 There were none.

**29c Exclusion of the Press and Public**

29.3 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Licensing Panel considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I of the Act).

29.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of Item 30 onwards.

**30 LE VILLAGE LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)**

30.1 The Panel considered a report of the Interim Executive Director of Neighbourhoods, Communities & Housing in relation to an application for a Review of Premises Licence under the Licensing Act for The Village, 2/3 High Street, Brighton, BN2 1RP. Present at the hearing were: Annie Sparks (Regulatory Services Manager), Mark Savage-Brookes (Licensing Officer), James Rankin (Barrister for Premises Licence Holders), Lee Cockshott (Premises Licence Holder), Simon Ebers (Premises Licence Holder), Samantha Dyke (representative), Lucille Robinson (Representative), Maribel Close (Representative), Rebecca Morris (Representative), Jamie French (Representative), Rebecca Siddell (Legal Advisor), Gregory Weaver (Democratic Services Officer).

30.2 Mark Savage addressed the panel and stated the following:

“This hearing has been convened so that the licensing authority can determine a review application submitted by Darwell Court Residents Group, who have applied as ‘a body representing persons living in the area of the premises’, in regard to the premises licence issued for The Village, 2/3 High Street, Brighton. The premises licence holders are Simon Ebers and Lee Wain. For clarification the licence issued specifies the trading name as The Village, but we understand that the premises actually trades as Le Village.

A copy of the current premises licence can be viewed in Appendix A from page 15 in today’s papers.

The review application was submitted to the licensing authority on 14<sup>th</sup> September and accepted on grounds relating to the Licensing Objectives for The Prevention of Crime & Disorder and Prevention of Public Nuisance. The review application can be seen in Appendix B from pages 23 to 28 of today’s hearing papers.

Seventeen representations were received in support of the review application and these were submitted by Local Residents, a Councillor, an Interested Party and the Environmental Protection Team. These can be viewed in Appendix C on pages 29 to 55.

Some representations were supplemented with evidence attached to them – these are as follows:

Rep N – pages 48-50 - which has a map, five photos and four video clips attached as supporting evidence. These were circulated to both the Panel members and the Premises Licence Holders. This evidence was not made publicly available due to the inclusion of some information deemed sensitive.

Rep O – pages 51-52 - two pictures and a video clip were submitted to supplement this representation – again these were not made publicly available but were circulated to the panel members and Premises Licence Holders.

Rep P – page 53 - this representation makes mention of video clip in the last sentence, but this was not submitted as it was too large in size to be electronically shared by the person making the representation.

Also received and circulated were photographs of further statements from Rep C (page 33) and Rep I (page 41) to supplement their submitted representations.

The panel will note that in Rep A (page 39) there is reference to taking a neutral stance to the allegations made in the application, however as an Interested Party, they suggest that conditions currently suspended due to the deregulation of certain entertainment activities could be imposed under 177A of the Licensing Act

(On a review of a premises licence a licensing authority may add a condition relating to music as if music were regulated entertainment.

Annex 2 Cond 2 no recorded music will be piped into the outside garden area – this is currently suspended during the hours 8am -11pm in line with the deregulation of recorded music in ‘on licensed’ premises between the same hours to an audience of less than 500 people).

There have also been submissions which the panel, the applicant and premises licence holders have been provided with. Some of these are in Addendum papers and some are not. So, I’ll run through these for you now:

In Addendum 1 you will see two statements from Simon Ebers, one of the two premises licence holders.

In Addendum 2 is a submission received from the applicants, from a previous manager of the premises when it was operated as the Ranelagh.

In Addendum 3 you will see an acoustic report submitted by the premises licence holders.

In Addendum 4 you’ll see a further statement made by Rep L (for Lima) (page 45)

In Addendum 5 you’ll see a witness statement from Lee Wain, one of the two premises licence holders.

In addition, the applicants submitted a response to the statements submitted by Simon Ebers, plus a submission from someone who visits family in the area and they submitted a list of three conditions that they propose are attached to the premises licence.

The spokesperson for Darwell Court Residents Group attending today, has also submitted their own representation, so there may be some crossover with evidence received by them that was intended for the applicant to submit. The spokesperson may elaborate on this.

The premises licence holder’s also submitted a video clip of the local area, which they would like to be played during the hearing.

All of the submitted evidence and addendum information has been circulated to all parties including the Panel Members. Addendum information deemed not sensitive or that was able to be reacted for public access was placed on the council’s website against the record for this hearing.

Section 52 of the Licensing Act 2003 provides that where the licensing authority considers that action in relation to the review application is necessary, for the promotion of the licensing objectives, it can take the following steps:

- Modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition) this includes the provisions in Section 177A of the Act, which in brief says that ‘On a review of a premises licence a licensing authority may add a condition relating to music as if music were regulated entertainment’
- Exclude a licensable activity from the scope of the licence
- Remove the designated premises supervisor
- Suspend the licence for a period not exceeding three months
- Revoke the licence

Licensing Guidance, issued under Section 182 of the Licensing Act states that:

In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.”

### **Questions of the Licensing Officer**

- 30.3 In response to Ms French, the Licensing Officer confirmed that members of the public could be seen in the video footage provided.
- 30.4 The Panel agreed to enter private session should video evidence need to be considered later on.

### **Representation from Samantha Dyke (on behalf of Darwell Court Residents)**

- 30.5 Ms Dyke addressed the panel and gave the following statement:
- It was stated that a review was requested despite ongoing attempts by some residents and intervention by BHCC in the form of an investigation regarding audio complaints which comprised of audio complaints and public nuisance from noise.
  - It was stated that a fair agreement was sought and not the removal of licence.
  - It was noted that this had affected many vulnerable residents.
  - It was reaffirmed that at no point had the motivation been of a prejudice against the LGBT community. It was clarified that this was entirely based on the impact of noise on residents.
  - It was stated that since the pub had changed to “Le Village” residents had sought a solution to the noise nuisance as there had been no other measure.
  - It was stated that BHCC suggested a licence review as the next course of action and supplied options of possible action to be taken.

- The panel was invited to view all supporting statements.
- It was noted that Mr Cockshot had incited hate toward Darwell Court residents by falsely accusing residents of being motivated by anti-gay agendas.

**Questions to Ms Dyke (on behalf of Darwell Court Residents)**

- 30.6 In response to Councillor Appich, Ms Dyke stated that the issue of antisocial behaviour fell in to 2 categories. Incidents not reported to the police due in some part to resident's needing to sleep and move one with life as it wasn't felt that police intervention would help; and the second was as a result of drink and drug users using resident's doorways, having quarrels and fighting.
- 30.7 In response to Councillor Simson, Ms Dyke stated that noise from music could occur at any time from 8pm till close, it was noted that events were regularly held every night and not restricted to Friday and Saturday. Various events were described and it was noted that an audio limiter would have a positive impact on the amount of noise emitted from the pub. It was further stated that currently it was set at a relatively low level at around 80 decibels and that residents had been affected largely despite there being other buildings between them and the venue. It was affirmed that moving to the garden would help alleviate some concerns with regard to smoking outside the front of the building.
- 30.8 In response to Councillor O'Quinn, Ms Dyke stated that the number of people congregating outside in front of Le Village varied but was around 10 and was rarely managed by security. In fact it was often the case that security was in conversation with pub goers.

**Representation from Jamie French**

- 30.9 Mr French addressed the pane and stated the following:
- The Panel were notified the Licensee was attempting to counter sue, It was noted that in session the licensee did want the pub to become a nightclub.
  - It was clarified that this was a pub not a nightclub.
  - It was stated that, Mr French was disabled and bed bound and that he had been victimised by people taking photos of property and had falsely labelled as homophobic.
  - It was stated that since the abatement notice had been served noise had died down however licensees had been witnessed walking past windows yelling insults.
  - Panel members were notified of the amount of drug use that occurred in the area.
  - Comparisons were given between the former manager and the current, it was noted that since new ownership communication had deteriorated.

**Questions to Mr French**

- 30.10 In response to Councillor O'Quinn, Mr French stated that they had been told that the reason for closing the backdoor was to close off an area that would, due to the composition of buildings, create a tunnel of sound which would further exacerbate the level of noise.
- 30.11 The Licensing Officer clarified that a noise limiter could still be tampered with.
- 30.12 The Regulatory Services Manager further clarified that the noise limiter installed on the premises was sophisticated and that it was possible to check frequencies of noise such as bass. It was stated that what had been installed here could address various frequencies and was tamper proof while being agreeable with the local authority.
- 30.13 Mr French clarified that Mr Ebers had 2 keys one which he kept.
- 30.14 The Regulatory Services Manager stated that they had not seen the system.
- 30.15 In response to Councillor Simson, Mr French stated that fire regulations would need to be considered if management were to open the main front doors.
- 30.16 Ms Dyke further noted that this would not help reduce noise as the 9pm close was not really adhered to.
- 30.17 Ms Morris stated that this would not help due to resident's close vicinity to the entrance.
- 30.18 In response to Mr Rankin, Mr French stated that there was a closed door policy from 12pm with security provided outside. It was further stated that a noise engineer had visited their residence to provide responses and expert advice concluding that wind wasn't a major factor in furthering noise disturbance. It was noted that during tests Mr French couldn't hear any noise disturbance during audio tests that took place. Mr French disagreed with the proposition that the source of noise was of a different venue.

**Representation from Rebecca Morris**

- 30.19 Ms Morris addressed the panel and stated the following:
- It was stated that the barrister was attempting to claim that all issues were from the Zone Bar however it was affirmed that all issues did not begin there. It was stated that there were no issues with other bars in the vicinity such as Bull Dog or Zone Bar and that music from Zone Bar was always cut off at a reasonable time.
- 30.20 In response to Councillor O'Quinn, Ms Morris stated that opening the garden may help however garden noise would have to be managed.
- 30.21 In response to Councillor Appich, Ms Morris stated that licensees had not introduced themselves and that light pollution had come from laser disco lights. It was noted that conditions had deteriorated following the new management and that adverts were being projected on to resident's walls.

30.22 In response to Councillor Simson, Ms Morris referred to video evidence which corroborated that noise nuisance was linked to Le Village. It was stated that her daughter's bedroom backed on to the kitchen door and that staff spent time on the balcony. It was noted that this was another source of noise and that a party that had taken place there had been reported and had a relevant crime number attached. It was agreed that closing the garden earlier would help alleviate some issue and that there was still the overarching issue of noise coming from shows being held.

### **Representation from Ms Maribel Coles**

30.23 Ms Coles addressed the panel and stated the following:

- Ms Coles gave a description of location of her residence and noted that due to constant noise she would have to wake up between 5:30-6am every morning. It was stated that weekends ought to be a recuperation period for residents and that conditions ought to be implemented to enhance wellbeing. It was stated that there had been no issues with the former management and that the disturbance was causing Ms Cole to take sleeping pills and, in some cases, seek residence in friends and families' flats due to being unable to sleep.

30.24 In response to Councillor O'Quinn, Ms Coles confirmed that there had been no issues with previous management.

30.25 In response to Councillor Appich, Ms Coles stated that there was a bike shed for court residents and that closing at or before 11:30 would be a positive condition.

### **Representation from Ms Lucille Robinson**

30.26 Ms Robinson addressed the panel and stated the following:

- It was stated the Ms Robinson had lived in their residence for 30 years and was well accustomed to revellers, noise and deliveries. It was stated that until new management there had never been an issue, that the only intrusion occurred since the opening of Le Village.
- It was stated that as a result of lights shining through bedroom windows and noise action was needed.
- It was stated that activity past 11:30pm and sometimes through till 3am was unacceptable.

30.27 In response to Councillor O'Quinn, Mr Robinson stated that a closing time of 11:30pm for the entire establishment was preferred.

30.28 In response to Councillor Simson, Ms Robinson stated that use of garden after 11:30pm would depend on the management of patrons.

30.29 In response to Mr Rankin, Ms Robinson stated that all pubs had issues with smokers and that whether they caused disturbance to neighbours was the responsibility of the licensees.

**Representation from Ms Samantha Dyke (on behalf of herself and family)**

30.30 Ms Samantha Dyke addressed the panel and stated the following:

- It was stated that a reason for noise disturbance was due to the lack of noise cancellation utilities installed to stop upwards flowing noise from gardens.
- A brief description of the residence was provided.
- Noise from bands was differentiated from the noise brought about by recorded music.
- It was stated that the previous management and engineers were exceptional in assuring that noise wasn't obtrusive and with dealing with any concerns early.
- Concern was expressed regarding a false assertion that residents had prejudices towards the lesbian and gay community.
- It was stated the Ms Dyke had met with Mr Cockshott early and that he was notified of issues however follow up meetings did not take place.
- It was stated that BHCC were contacted in November once events became consistent and negative and that it was revealed that 5 other residents had each filed complaints.
- It was stated that Mr Ebers had visited and promised the installation of noise cancelling units such as double glazing and a limiter however this had not come to pass.
- It was stated that Ms Dyke's husband suffered from cerebral palsy and dystonia and that the ensuing noise disturbances severely affected the family.
- An event was noted wherein drag artists stood in Middle Street and sang Disney songs which led to waking up Ms Dyke's 21month old baby. It was asserted that this alongside lockdown measures had severely exacerbated her family's health.
- Examples of drug use by pub attendees on Ms Dyke's property were given along with other concerning incidents.
- It was further noted that further anxiety had been brought about by a member of staff in GScene magazine making false accusations of anti-gay prejudice.
- It was stated that evidence had been submitted of people fighting and shouting outside the venue.
- It was noted that while this was also a resident's neighbourhood and that resident's were being tarnished.

**Questions of Ms Dyke**

30.31 In response to Mr French, Ms Dyke clarified that abuse was not limited to Facebook and that false accusations had been spread by the same people on the Argus and Brighton and Hove News.

30.32 Mr Cockshott stated that posts made were by the news media and that evidence submitted was put out to public, it was further noted that Mr Cockshott had not made comments to GScene or the Argus.

30.33 Ms Dyke stated that this was shared by the Argus and GScene and that it was a member of Le Village's staff that forwarded this on to GScene.

**Representation of Annie Sparks (The Regulatory Manager)**

30.34 Ms Sparks addressed the panel and stated the following:

“This is a representation on behalf of the Environmental Protection Team and the licensing objective prevention of public nuisance in support of the review of the premises licence holder of Le Village. As we have already heard this morning Le Village is in an area where there’s mixture of commercial shops and other licensed premises but also residential accommodation in close proximity. The Environmental Protection Team started to receive noise complaints on the 23<sup>rd</sup> September 2019 and by mid-November there were 7 more complaints. This included noise from loud music, noise from karaoke from inside the pub and noise from patrons outside the pub gardens and we have heard extensive evidence from the residents in relation to the character and frequency of that noise.

As complaints were investigated, visits were made to the premises by the Environmental Protection case officer, Elaine Hayward, and also the licensing officer. This was to discuss details and also our powers in relation to statutory nuisance and also what action could be taken to address the complaints.

I personally visited the premises and met with Simon and Lee and a representative from Enterprise Inns, this was a good opportunity to discuss complaints, possible action to mitigate noise and this included quite an extensive discussion in relation to a possible lobby on the south facing door.

Just as a reminder, under the provisions of the Environmental Protection Act 1990, statutory nuisance is assessed on the character of the noise, the duration and frequency of the noise and how it affects people in their home. We have heard evidence of that today. There is no quantitative decibel level defining statutory noise nuisance and there is no statutory level for a noise level.

That is why noise diary sheets are a good tool for recording how people are affected any also when. 5 more noise diaries were returned to BHCC and we also installed recording equipment in premises in Darwell Court. We have a duty to investigate noise complaints, we can’t just say because it is a licensed premises we are not going to investigate, we can’t do that. When we identify statutory nuisance we have a duty to also serve the noise abatement notice even though people may say they will address the noise problem.

As a result of the investigation undertaken by Elaine Hayward including the analysis of the diaries provided by residents and also listening to the recording from the premises in Darwell Court, it was agreed that noise abatement notice would be served on Lee and Simon. That was under section 80 Environment Protection Act and that was served on the 15<sup>th</sup> January 2020 just prior to the pandemic. That notice is issued on the balance of probabilities, it is not done beyond all reasonable doubt which is for a breach of the notice however the noise abatement notices were appealed in the Magistrates Court. The Court has yet to determine the outcome of this appeal and the appeal hearing so far is scheduled for January 2021.

Clearly since then the Covid pandemic has restricted the operation of the premises, we have still heard about complaints and noise that residents are experiencing. The

pandemic has also restricted our service delivery as a team and response to complaints. Covid risk assessments have been undertaken by BHCC to protect the safety of staff, members of the public including business owners and residents. On the 2<sup>nd</sup> July 2020 another Environmental Protection officer was allocated to the case, Edward Bulger, for investigating noise complaints. On the 4<sup>th</sup> July 2020, licensed premises were allowed to reopen following the Covid lockdown. Since then correspondence was received by BHCC from 4 neighbours concerning noise from the pub. This was correspondence dated 27<sup>th</sup> August 1<sup>st</sup> September and covers noise events on the 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> of September. Further complaints were received on the 7<sup>th</sup> September and 15<sup>th</sup> September. A noise diary was submitted detailing disturbance between the 24<sup>th</sup> July and on the 15<sup>th</sup> August 2020 and on the 11<sup>th</sup> September an officer from the Environmental Protection Team and a Police Licensing Officer visited one of the neighbours, but a breach of the notice and a statutory nuisance was not identified.”

### **Questions of the Regulatory Services Manager**

- 30.34 In response to Councillor Appich, the Regulatory Services Manager stated that Environment Health performed joint visits with the police licensing team and that it was known that there had been other visits, calls and correspondence regardless of the visit.
- 30.35 In response to Mr French The Regulatory Services Manager stated that complaints had come not just from Darwell Court but from others however anonymity was key.
- 30.36 In response to Mr Rankin, The Regulatory Services Manager stated that statutory nuisance had never been witnessed however evidence from noise diary sheets was key. It was stated that part of the investigation had also been carried during the Covid pandemic whilst it was severely restricted. It was further noted that there was no non-stop noise patrol to check on this whenever as this was erratic however all knew that was within the terms of service of the noise abatement notice. It was stated that evidence could be assessed from diary evidence from various residents in areas and from noise recordings which corroborated and counted as evidence. It was further stated that this was good practice and that Ms Sparks had also been investigating noise complaints for over 30 years having served many noise abatement notices. It was asserted that BHCC did not require a personal visit from a professional officer to witness noise.
- 30.37 The Legal Advisor clarified that an emphasis on statutory nuisance was not relevant here.

### **Representation from Mr James Rankin (Barrister for License Holder)**

- 30.38 Mr Rankin addressed the panel and stated the following:
- It was noted that a conversation had taken place over the issue of the false accusation of anti-gay prejudice which had an undertone that was concerning, it was noted that the license holders were both gay and had suffered prejudice in some form for years.
  - It was noted that there had been a breakdown in communication but panel members and residents were reassured that Le Village was not the enemy.

- It was noted that often times all ills could be laid at the floor of the pub, reference was made to the aforementioned balcony party and it was clarified that this had in fact had nothing to do with the venue. It was noted that once made aware, Le Village issued a stern warning was sent to residents and that any future similar behaviour would have an impact on their tenancies.
- It was stated that residents may become entrenched in their views if there was little discussion to help allay concerns, and that it would be more beneficial to contact the venue early rather than contacting BHCC straight away.
- It was stated that Mr Ebers noted that Darwell Court was built on a car park which was formerly the property of Le Village and that the principle of agent of change which now applied, required that the developer had to build in to any planning application, a recognition that the area was surrounded by music venues.
- Reference was made to the House of Lords Select Committee on the National Policy Framework which stated that it was important to build this consideration in to guidance and was formally supported by the Government. It was stated that an amended DCMS guidance reflecting the agent of change principle.
- It was stated that the agent of change principle had not been applied and that the premises had operated for 30 years, it was asserted that it would be unfair that a new person arrived, chose to live in a lively area and that it should not be the settled intention of the newly arrived resident to change, alter or shut down the premises.
- It was stated that nothing united people like a cause and that letters and action augmented by comments from residents put forward in support of Ms Dyke's representation had a unifying effect and that now every negative event could be seen as the fault of Le Village.
- Reference was made to an event whereby Ardingly Court were approached by Ms Dyke regarding drug use, police were so moved by the plight of residents that a "crack flat". This didn't lead to the removal of the issue of drug use and supply in the area as police later tackled a case of county lines in St James' street despite Le Village was closed due to Covid at this time.
- It was noted that the Licence holders were really pro active and that in the case of a police visit, following a complete inspection including swabs of the area, authorities were satisfied and made no representation at this review.
- It was stated that the licence holders received letters in October and November followed by a long silence. It was noted that there was no further communication to indicate matters had gone awry until a noise abatement notice was issued in January. Mr Rankin stated that in his experience as a barrister it was concerning that trained Environmental Health officers had visited the premises out of hours and never identified a statutory nuisance.
- Reference was made to evidence submitted and it was noted that there were 7 other premises within 100 metres of the venue all of which provided entertainment. It was suggested that all other noise heard from other venues could have been attributed to Le Village.
- It was stated that video evidence submitted could not be considered proof that everything could be blamed on Le Village.
- It was stated that Le Village were willing to concede to conditions on Friday and Saturday with an option for Licensing Panel to bring back hours of operation till 1am with half an hour drinking up time.
- The panel were reminded that this was a review of the premises and not intended to penalise for previous behaviour. It was stated that the aim was to establish causes

that representatives had identified and synthesising remedial action geared toward allaying these causes proportionately.

- Efforts taken to limit noise by the licence holders was outlined and that Ms French had agreed that they were unable to hear noise even when tested at highest levels.
- The following proposals were supplied:
  - 1) That a noise limiter be installed and maintained at premises set at levels as may from time to time be approved by BHCC environmental health officers.
  - 2) A structure be built to further contain noise, though specifics couldn't yet be outlined a commitment could be made.
  - 3) An acoustic expert recommended a number of works.
  - 4) The side door on to the high street be moved after a certain time.
  - 5) Access and egress to be moved to the garden.
  - 6) An amendment would be needed for an existing condition which prohibited the use of the garden till 11:30pm. It was suggested that, save for persons smoking, the garden should be cleared of patrons by 23:30 and the door be kept closed from that time.
  - 7) Number of smokers outside be restricted to 10 followed by SIA.
  - 8) Installing a lobby door would require planning permission.
  - 9) An hour be cut back on Fridays and Saturday to 1am.

30.39 Mr Cockshott agreed to look at possible installation of acoustic barriers between the garden and balconies and clarified that projected advertising was only displayed for 8 weeks and that this had since been unplugged.

#### **Questions of the Barrister and Licensees**

30.40 In response to Councillor O'Quinn, Mr Cockshott noted that a side entrance would mean more control rather than customers entering from the public highway.

30.41 In response to Councillor Simson, Mr Ebers stated that the speaker was installed in the garden for customers to enjoy the atmosphere during the Covid pandemic.

30.42 Lee Cockshott noted that it had been pride week at the time and referred to guidance which stated that entertainment ought to be outside not in. Reference was made to statements made public via Facebook and it was noted that allegations of specific people being accused were unfounded. It was clarified that nobody had been named. It was agreed that in hindsight this was an unhelpful post.

30.43 In response to Councillor Appich, Mr Rankin stated that proposed closing times were a gesture of reconciliation and goodwill and further proposed Sunday operating hours cut back to 12 with half an hour drinking up time.

30.44 In response to Ms Dyke, Mr Rankin stated that submitting videos of people busking and singing outside without any supporting documentation that this had anything to do with Le Village was not evidence that they had visited the venue. However to suggest they had all come from or headed toward Le Village. It was further stated that agreement could be found on the decrease in number of people outside as a result of measures since taken. It was accepted that there had been problems and that members were asked to help find a solution rather than erect barriers.

- 30.45 In response to Councillor Simson, Mr Cockshott stated that ticketed events were rare. It was clarified that capacity in the garden and inside was 120.
- 30.46 Mr Rankin clarified that there was no condition for door staff at the moment, however when door staff were put on it was from 9:30pm till premises close.
- 30.47 Lee Cockshott confirmed that door staff was used on Friday – Sunday. It was clarified that door staff would not be needed on Sunday should hours be cut back.
- 30.48 In response to Ms Robinson, Mr Ebers stated that insulation and air conditioning works were planned to be installed for the Summer however these had fell through due to Covid.
- 30.49 In response to the Regulatory Services Manager, Mr Cockshott stated that the installation of a gazebo was for the winter and that heaters were installed attached to the walls. It was noted that the garden could be used as a non-smoking area as well and the idea of the side door was that security would be there to enforce this. It was further stated that people would not be allowed to sit down, smoke and drink from 11:30pm and that security were present during the weekends, it was proposed that a marshal be placed on the door to make sure everything had been complied with.

### **Summaries and Decision**

- 30.50 The Licensing Officer addressed the panel and gave the following summary:

“This hearing was arranged so that the Licensing Authority can determine an application for a review of a premises licence, submitted by Darwell Court Residents Group in respect of the premises licence issued for The Village. The applicant contended that the licensing objectives of Prevention and Crime & Disorder and Prevention of Public Nuisance had not been upheld. Seventeen representations were received to support the application. representations.

You have now read all submissions, viewed the submitted evidence from both the applicant and the premises licence holders and have heard from all parties present at this meeting.

Section 52 of the Licensing Act 2003 provides that where the licensing authority considers that action in relation to the review application is necessary, for the promotion of the licensing objectives, it can take the following steps:

- Modification of licence conditions – adding, modifying or removing conditions
- Exclusion of a licensable activity – this could include limiting hours or activities in all or part of the premises
- Removal of a designated premises supervisor
- Suspension of the licence for a period not exceeding 3 months
- Revocation of the licence

I remind the panel that if minded to, they can add conditions under 177A of the Licensing Act.

I remind the panel that in deciding which of these powers to invoke, it is expected that licensing authorities should, so far as possible, seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.

In making a determination this review submission, I would advise the panel refer to Paragraphs 11.16 -11.23 of the Section 182 Guidance, which give guidance on powers of a licensing authority on the determination of a review.”

30.51 Ms Samantha Dyke addressed the panel and stated that there had been 17 representations 4 of which were from Darwell Court and the rest from local residents. It was stated that it was important that an installed limiter be reviewed to ensure it was at a level everyone found acceptable. It was clarified that concerns were around management of conditions and measures promised to be taken by Le Village managers.

30.52 Ms Lucille Robinson addressed the panel and stated that as a long-time resident criticism and complaints of the venue were difficult as it would lead to the false accusation of homophobia. Reference was made the poor history by management and the panel were invited to consider this.

30.53 The Regulatory Services Manager addressed the panel and stated the following:

“In regard to the Environmental Protection noise, we have received several complaints about noise and that’s noise from both inside the premises, music and people noise but also noise from people outside too. We have conducted an investigation across a number of different complainants and gathered evidence from those complainants and noise recordings and from that evidence we defined a statutory noise nuisance. We had to serve a noise abatement notice and that was done in dialogue with both Simon and Lee.

I personally visited the premises to talk to them about the complaints that we had received and talking about solutions that they could provide to help manage the noise. In addition, we heard a lot of discussion about possible conditions that can be applied and I would welcome those conditions to provide strict measures and controls going forward.

In addition I would welcome the use of the noise limiter and the condition that’s been proposed and we are more than happy to set the limit on that condition in collaboration with Simon and Lee and the local residents but to do that we need notice and we need time to organise that and make sure that the right people are in the right places and the right premises and we were approached just before the last hearing there wasn’t that notice. So, it is just making sure that if we are to do that, we’re more than happy that that’s being imposed by condition but we just need to have notice.”

30.54 Mr Rankin addressed the panel and stated that there was clear need for bridge building and that there would be no excuse if conditions were imposed and subsequently breached. It was stated that what was proposed was the least onerous course, a proportional response. The conditions proposed were outlined.

30.55 **RESOLVED** – that the panel’s decision was as follows:

“The panel has considered this application for review, representations, statements and other additional information, including videos. The panel has listened carefully to all submissions made at the hearing. The panel has had regard to the Licensing Act 2003, Statutory Guidance and the Statement of Licensing Policy.

The review is brought by Darwell Court Residents Group based on the Prevention of Crime and Disorder, and the Prevention of Public Nuisance licensing objectives. Representations supporting the review have been made by local residents, a Councillor, the Environmental Protection Team and an interested party.

The main grounds for the review are noise disturbance and nuisance to the residents of Darwell Court from the playing of loud music and events at le Village (‘the premises’) up to 1 and 2 am, and from patrons congregating noisily outside the premises on the pavement, and anti-social behaviour. There were also issues of light pollution and noise from the garden. Other residents in the vicinity supported the review for the same reasons. A noise abatement notice was served by the Environmental Protection team on the 15<sup>th</sup> January which is currently the subject of an appeal by the premises licence holders. The review called for measures to be put in place to address these issues and some conditions were suggested along with some reduction in hours of operation. The panel heard evidence from the spokesperson for the applicant residents’ group and several other residents who had made representations. The Environmental Protection manager also made submissions.

The premises licence holders were represented by their barrister Mr Rankin. On their behalf several submissions were made including that the noise and disturbance was likely to be coming from other premises in the area such as the Zone or the Bulldog. An acoustic report had been commissioned by the licence holders and some of the proposals in that report had or were in the process of being implemented and a noise limiter had been installed. Other measures and conditions were proposed as a proportionate response including some reduction in hours.

The panel must take such statutory steps under the Licensing Act in response to the review as are appropriate to promote the licensing objectives. The panel has considered our Statement of Licensing Policy and enforcement approach and the S182 Statutory Guidance in relation to reviews, in particular paragraph 11.20, about establishing the causes of the concerns raised and taking action as an appropriate and proportionate response to address them. The panel has considered all the options available to them however, we have focussed on the most appropriate action in this case, as agreed by the parties, which is to modify the conditions on the licence including adding new conditions and reducing hours of activity and operation.

Overall, the panel considers that the evidence from the residents was compelling and relevant especially that of the main spokesperson for the review. Some aspects of their testimonies were deeply unsettling especially that surrounding campaigns against them on social media and the impact that had had on their lives in addition to the noise disturbance. The impression we gained was that they very much wanted to work with the pub to solve these issues, rather than seek its demise, and the measured proposals they

put forward illustrates this. The panel consider it is clear that the licensing objective of the prevention of public nuisance has been undermined by the premises in this case. The panel did give consideration to the submission that the noise came from other premises in the vicinity but from the evidence given we consider that the majority of the noise disturbance in this case was emanating from these premises. We believe that the licence holders as experienced licensees have been slow to react and respond appropriately to the complaints raised and this has led to the need for this review. However, it is encouraging that the premises licence holders are now offering some positive proposals.

The panel was able to question all the parties and canvass appropriate conditions. What is notable in this case is that different kinds of noise from different areas of the premises created varying impacts for residents depending upon where they lived in relation to the premises - perhaps at the front of the premises or close to the back garden. The panel in taking action is trying to mitigate all these factors. The panel has decided to attach the following conditions to the licence. The panel notes the effect of S177A of the Licensing Act and imposes these conditions as an appropriate response to this review and as if the music was at all times regulated.

1. Monday to Saturday, the hours for licensable activities (apart from live music) shall be from 10.00 to 01.00. The premises will close at 01.30. On Sunday the hours for licensable activities (apart from live music) shall be from 10.00 to midnight closing at 00.30.
2. A noise limiter shall be installed and maintained at the premises and shall be set at such levels as approved by an environmental protection officer from Brighton and Hove City Council in consultation with local residents (upon reasonable notice to those persons). Once set the limiter shall be locked and tamper free. (NB re S177A this applies following review).
3. The side door of the premises leading onto High Street, shall remain closed after 21.00 save for egress as a fire exit. After 21.00 the rear door leading to the garden shall be the main access in and out of the premises.
4. Amended Garden conditions. The rear garden shall be cleared of patrons by 23.00 and the rear door kept closed after that time save for access and egress. Bright lighting shall be switched off. After 23.00 the garden shall be open only to patrons wishing to smoke and there shall be no more than 6 smokers in the garden at any one time. No drinks or drinks containers shall be taken into the garden after 23.00. No recorded music shall be played in the garden via speakers or otherwise. *Please note S177A does not apply to this condition as it is added after a review.*
5. Live music including cabaret to end at 23.00.

Comment on the garden and live music conditions. The panel considers that the noise from the garden has caused a nuisance to some of the residents and in view of the installation of the 2 gazebos in the garden there is potential for more people to be in the garden. Given the close proximity of some residents to the garden it is appropriate for it to close at 23.00 hours. Furthermore, the panel considers it appropriate to limit live music and acts to 23.00 and this will also tie in with closure of the garden.

6. At least 1 SIA registered door staff shall be employed at the premises from 21.30 hours to close on Friday and Saturday nights. They shall be responsible for managing the garden door and number of smokers after 23.00.

7. The panel wish to reiterate and reinstate the current condition already on the licence namely that *'the licensee shall ensure that noise or vibration does not emanate from the premises so as to cause a nuisance to nearby properties.'* For the avoidance of doubt S177A does not apply to it as it is imposed on review.

The panel notes that the licence holders propose to upgrade the double glazing to the windows on the east façade and have said that they will give positive consideration to the installation of an acoustic barrier in the garden. Further consideration will also be given to installation of a lobby. All this is welcomed. The panel sincerely hopes that the relationship between the premises and local residents can improve and that the management and residents can engage in a positive manner going forward and that inflammatory campaigns on social media can be avoided. The panel considers that the above conditions will promote the licensing objectives and are an appropriate, proportionate, and necessary response to this review."

The meeting concluded at 4.30pm

Signed

Chair

Dated this

day of