

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

10.00am 8 JULY 2021

VIRTUAL

MINUTES

Present: Councillors Simson (Chair); Henry, Knight and Simson

Officers: Sarah Cornell, Senior Licensing Officer Rebecca Sidell, Lawyer and Penny Jennings, Democratic Services Officer

PART ONE

1 TO APPOINT A CHAIR FOR THE MEETING

1.1 Councillor Simson was appointed Chair for the meeting.

2 PROCEDURAL BUSINESS

2a Declaration of Substitutes

2.1 There were none.

2b Declarations of Interest

2.2 There were none.

2c Exclusion of the Press and Public

2.2 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).

2.3 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of any item on the agenda.

3 NEW PREMISES LICENCE APPLICATION, MALO,11 DUKE STREET, BRIGHTON

- 3.1 The Panel considered a report of the Executive Director of Housing, Neighbourhoods and which required them to determine an application for a new premises licence for Malo Brighton Limited, 11 Duke Street, Brighton

Presentation by the Licensing Officer

- 3.2 All parties introduced themselves and the Senior Licensing Officer, Sarah Cornell; gave a presentation detailing the application. It was noted that the application proposed a family run takeaway/restaurant, the area/ street was characterised by mixed retail, restaurants and pubs/bars, residential and offices. It was noted that the premises was located in the Cumulative Impact Zone (CIZ) and that three representations had been received, from a local business. Sussex Police and the Licensing Authority. The premises were located in the CIZ where there was a presumption against granting additional premises licences as the area was considered to be at saturation point in terms of cumulative impact, crime and disorder and public nuisance offences and it was considered that there was a need to protect children from harm. The policy was not absolute however, each application needed to be considered on its individual merits and permission could be granted if a case for exception to policy could be made.

Submission on Behalf of Neighbouring Premises

- 3.4 Panel Members considered a letter of representation and objection received from a local business, noting the points which had been made in respect of the proposed business. The business nature of the street had changed over the years and there were now a substantial number of outlets selling alcohol; this use would add to the supply.

Submission on Behalf of the Licensing Authority

- 3.4 The Licensing Officer, Donna Lynsdale was present representing the Licensing Authority and referred to their concerns in respect of this application was contrary to the Statement of Licensing Policy, being situated as it was in the CIZ and could undermine the Licensing objectives of the prevention of crime and disorder and the prevention of public nuisance. There were no specific concerns in relation to the applicants themselves and it was noted that presumption of refusal could be rebutted by the applicant if they could show that their application would have no negative impact.
- 3.5 The Council's Matrix Model, included in its Statement of Licensing Policy stated that in the CIZ, restaurants were considered favourably until midnight and this application fell within that. However, the applicant also wanted to provide off sales and a delivery service which included alcohol sales and that was not supported in the CIZ, although departure from the Matrix Model could be made in exceptional circumstances.

Submission by Sussex Police

- 3.6 The Police were represented by Claire Abdelkader who spoke to representation submitted by the Police which stated that the premises lay within Regency Ward which was ranked number 1 in the city for all violence against the person, all injury violence, non-injury and sexual offences. number 2 for police recorded alcohol related incidents and number 3 for criminal damage, demonstrating that there was higher risk to the licensing objective of the Prevention of Crime and Disorder in this area. There had been

confusion around the proposed business model as Late-Night refreshment had not been applied for despite the fact that the premises had been described as a restaurant takeaway.

- 3.7 Ms Abdelkader explained that latterly the applicants had been in touch with the Police and had agreed to a number of conditions in order to mitigate any potential negative impact.

Submission by the Applicants

- 3.8 The applicant's daughter who would be running the new licensed premises answered a number of detailed questions which were put by Members of the Panel in order to establish precisely the type of premises envisaged, how it would be run, its hours of operation, the food and drink offer which would be available and specifically how the delivery element of the business would operate in practical terms.
- 3.9 It was established that the applicants ran another premises in the city which had been in operation for a number of years and had not given rise to any problems. That premises licence had been granted without the necessity to attend a hearing. The applicants confirmed during the course of discussion that they were prepared to meet additional conditions. The Chair stated that it was not the task of the Panel to devise conditions on the applicant's behalf, however the Police representative suggested a number of conditions which could prevent nuisance and could sit within the Matrix approach referred to earlier in the meeting. All of these proposed conditions were canvassed with and agreed by the applicants.

Closing Submissions

- 3.10 Once the point had been reached when no further issues were raised and following the closing submission by the Licensing Officer each of the other parties gave their closing submissions re-iterating the points that they had raised during the course of the meeting. The Panel then deliberated on the matter and made their determination.

The Decision

- 3.11 The Chair stated that the Panel had read all the papers including the report, relevant representations and further document from the applicants, and had listened to all the submissions made that day.

This was an application for a new premises licence within the Cumulative Impact Zone (CIZ) and therefore subject to the special policy on cumulative impact as set out in the Statement of Licensing Policy. The Panel had decided accordingly:

Our policy states that applications for new premises licences 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. The special policy will only be overridden in exceptional circumstances. However, the policy is not absolute and both the policy and matrix approach indicates that a restaurant/café bar within certain hours may be unlikely to add to cumulative impact in the area and therefore be exceptional.

The application is for a specialist Argentinian food and drink premises operating as a café/restaurant with takeaway food and alcohol including deliveries. Relevant representations were made by the Police, Licensing authority and a local business.

In the representations concerns were expressed about the location of the premises within the CIZ and the lack of clarity as to the business model of the premises which appeared to be contrary to the special policy in terms of the hours applied for until midnight and some activities such as off sales of alcohol.

The applicants explained their proposal which was to offer specialist Argentinian food especially empanadas and premium Argentinian wines for consumption both on and off the premises. They were willing to modify their operating schedule to fit in more with the policy and the matrix. Both the panel and the police were able to question the applicants extensively about the style and operation of the business. When questioned about their hours and operation in practical terms they considered that they would operate more like a café rather than a restaurant and were happy to accept café bar conditions and operate to 10pm. They were only proposing to have the ground and first floor licensed and not the second floor as originally put forward. In terms of off sales of alcohol and deliveries the applicants were willing to restrict the hours to end at 9pm and restrict the type of alcohol offered namely Argentinian wine, beer and lager only and to sell these as part of a food order. The police put forward a number of conditions which the applicants were willing to accept including a number about delivery of alcohol.

The panel has given careful consideration to this application and considered all the representations including that of the local business. The application has changed considerably from that originally applied for. Now, as a café operating until 10pm and with limited off sales, many of the objections to the application fall away. In terms of on sales, this is the type of premises recognised in our policy as unlikely to add to cumulative impact and thus constitute an exception to policy. It also fits within the matrix. The off sales have been restricted to Argentinian wines and beers with food and as such in our view are exceptional reasons for departing from the policy in this respect. With all the conditions attached to this licence the panel believes that the application is unlikely to add to problems of cumulative impact and will promote the licensing objectives. The panel therefore grant the application as follows:

The sale of alcohol on the premises will be from 09:00 to 22:00 hours each day with opening hours the same. Off sales of alcohol will be from 09:00 to 21:00 hours each day. The licensed areas will be the ground and first floors. The following conditions will be applied to the licence:

General:

1. The sale of intoxicating liquor and other beverages shall be solely be for consumption by persons seated at tables. There will be no vertical drinking at any time.
2. Substantial food shall be available at all times that alcohol is offered for sale on these premises.

3. The type of alcohol sold under this licence for consumption 'off' the premises will be limited to Argentinian wines, sparkling wines, beers and lagers. These will only be sold as part of a food order.
4. No beer, lager, cider or perry with an ABV over 6% or above shall be sold at the premises save that this shall not apply to premium beer, lager, cider or perry with an ABV over 6% or above such as craft or speciality brands or brands produced by a micro-brewery, or brands produced to commemorate a national or local event.
5. Authorised staff employed by Sussex Police shall have free access to all parts of the licensed premises at all times licensable activity is taking place or when open to members of the public, for the purpose of inspection to ensure compliance with the terms and conditions of the premises licence and to ensure the promotion of the licensing objectives.

For the Prevention of Crime and Disorder:

6.
 - (a) Digital CCTV and appropriate recording equipment to be installed in accordance with Home Office Guidelines relating to UK Police Requirements for Digital CCTV System (PSDB Publication Number 09/05), operated and maintained throughout the premises internally and externally to cover the entrances/exits to the premises and the fridges/shelves where alcohol is stored. The system shall be on and recording at all times the premises licence is in operation.
 - (b) The CCTV cameras and recording equipment must be of sufficient quality to work in all lighting levels inside the premises at all times.
 - (c) CCTV footage will be stored for a minimum of 31 days
 - (d) The management will give full and immediate cooperation and technical assistance to the Police in the event that CCTV footage is required for the prevention and detection of suspected or alleged crime.
 - (e) The CCTV images will record and display dates and times, and these times will be checked regularly to ensure their accuracy.
 - (f) Subject to GDPR guidance and legislation, the management of the premises will ensure that key staff are fully trained in the operation of the CCTV, and will be able to download selected footage onto a disk (or other electronic portable device acceptable to Sussex Police e.g. USB) for the police without difficulty or delay and without charge to Sussex Police.
 - (g) Any breakdown or system failure will be notified to the police immediately & remedied as soon as practicable.
 - (h) In the event of the CCTV system hard drive being seized as evidence as part of a criminal investigation by Sussex Police or for any other reason, the premises will be

expected to install a replacement hard drive or a temporary replacement drive as soon as practicable.

7.

- (a) An incident and refusals log will be maintained by the premises showing a detailed note of incidents and refusals that occur in the premises. The log will be inspected and signed off by the DPS (or a person with delegated authority) at intervals of no more than four (4) weeks.
- (b) The log book should be kept on the premises and be available for inspection at all times the premises are open by authorised officers of the Licensing Authority or the police. An incident will be defined as being one which involves an allegation of a criminal offence.
- (c) Feedback shall be given to staff to ensure these are used on each occasion that a refusal or incident occurs at the premises.
- (d) Any refusals made for alcohol service e.g. underage, will be recorded and feedback given to staff as relevant. The log will be kept for a minimum of twenty four (24) months.

For the Prevention of Public Nuisance:

Conditions as stated in original application or agreed with Environmental Protection

For The Protection of Children from Harm:

8.

- (a) The Premises Licence Holder shall ensure that all staff members engaged or to be engaged, in selling alcohol at the premises shall receive the following induction training. This training will take place prior to the selling of such products:

*The lawful selling of age restricted products

*Refusing the sale of alcohol to a person who is drunk

- (b) Further verbal reinforcement/refresher training covering the above will be carried out thereafter at intervals not to exceed 8 weeks, with the date and time of the verbal reinforcement/refresher training documented.
 - (c) All such training undertaken by staff members shall be fully documented and recorded. All training records shall be made available to Sussex Police, officers of the local authority and officers from the Trading Standards team upon request.
9. The premises will operate a "Challenge 25" policy whereby any person attempting to buy alcohol who appears to be under 25 will be asked for photographic ID to prove their age. The recommended forms of ID that will be accepted are passports, official Photographic Identity Cards issued by EU states bearing a hologram or ultraviolet feature, driving licences with a photograph, photographic military ID or proof of age cards bearing the 'PASS' mark hologram. The list of recommended forms of ID may be amended or revised with the prior written agreement of Sussex Police, the Licensing Authority and Trading Standards without the need to amend the licence or conditions attaching to it.

10. Signage advertising the 'Challenge 25' policy will be displayed in prominent locations in the premises.
11. A list of staff members who are authorised to sell alcohol on the premises shall be kept. This shall be endorsed by the DPS with the date such authorisation commences.

Delivery Service

12. All forms of advertising and promotional literature detailing online sales (including internet sites, social media and physical flyers/leaflets) will clearly and predominantly state that the company operates a Challenge 25 policy and the forms of approved ID that will be accepted. Customers will be made aware that age verification checks e.g. Challenge 25 will take place before alcohol is handed to the recipient and that failure to show the required form of ID will result in non-delivery of the alcohol.
 13. Alcohol for delivery off the premises will only be as part of a food order with a minimum food order of £10.
 14. Alcohol for delivery off the premises will be in sealed containers only and restricted to Argentinian wines and beers/lagers.
 15. All deliveries will be made by a reputable/certified courier company who has a relevant age verification process in place, the premises Licence holder, or a direct employee of the Premises Licence holder.
 16. Alcohol will only be delivered to residential and business addresses. Alcohol will not be delivered to customers at a park, in an open space, the beach, a bus stop etc.
 17. When an order is taken for delivery to a customer the following information will be recorded in either electronic or paper form:
 - a) A list of individual items delivered
 - b) The delivery address;
 - c) The method of payment;
 - d) The name of the person ordering and receiving alcohol;
 - e) The date and time of delivery;
 - f) If proof of age was asked for, confirmation of the type of proof of age document presented and accepted;
 - g) Any refusals made for alcohol service e.g. underage suspected so no delivery
 - h) The name of the third-party company, employee or representative of the premises who made the delivery.
- 15.
- (a) A record of sales and deliveries (as per condition 14) will be kept and made available for inspection by the Police, Licensing Authority or officers from the Trading Standards team for 12 months from the date of delivery or refusal of alcohol.

(b) The Designated Premises Supervisor shall frequently check the record (minimum every 4 weeks) to ensure all staff are using it and shall sign and date it immediately after the latest entry as a record of doing so.

3.12 **RESOLVED** – That a new Premises Licence under the Licensing Act 2003 be granted to Malo, 11 Duke Street, Brighton be granted in the terms set out above.

Note: The Legal Adviser to the Committee informed the applicant's that they would receive notification of the Panel's decision in writing with details of their appeal rights attached.

The meeting concluded at 11.20am

Signed

Chair

Dated this

day of