

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

10.00am 4 MARCH 2022

VIRTUAL

MINUTES

Present: Councillor Deane (Chair), Simson and Theobald

Officers: Sarah Cornell (Licensing Officer), Liz Woodley (Senior Lawyer) and Clare Chapman (Democratic Services Officer)

PART ONE

1 TO APPOINT A CHAIR FOR THE MEETING

Councillor Deane was appointed Chair for the meeting.

2 PROCEDURAL BUSINESS

2a Declaration of Substitutes

There were none.

2b Declarations of Interest

There were none.

2c Exclusion of the Press and Public

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).

RESOLVED - That the press and public be not excluded from the meeting.

3 REAL GREEK GYROS LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

In attendance:

Applicant Derya Yilmaz, Agent

Making Representation: Local resident (name withheld)

- 3.1 The Panel considered a report of the Executive Director of Housing, Neighbourhoods and Communities which required them to determine an application for the variation of a premises licence at Real Greek Gyros, 116 St James's Street, Brighton, BN2 1TH.

Licensing Officer

- 3.2 The Licensing Officer presented the application and summarised the contents of the report. She confirmed that the licence was for the premises adjacent to 117 St James's Street and would form a joint take away restaurant.
- 3.3 The Panel asked why the applicant had applied for a variation instead of a new premises licence. The Licensing Officer advised that having looked through the proposals, it was considered to be a major variation to the existing licence.
- 3.4 In response to a question from the Panel, the Licensing Officer confirmed she was aware of only one noise complaint regarding construction noise which was made in December 2021.

Local Resident

- 3.5 The local resident reiterated his concerns as outlined in his written representation and explained that the recently constructed patio was immediately adjacent to his property. He was concerned that noise and smoking from patrons would disturb him in the evening, and in all likelihood the noise would increase with the amount of alcohol being consumed. He feared that a further outlet selling alcohol would only exacerbate existing problems such as parking, people loitering and urination in the street.
- 3.6 In response to a question from the Panel, the local resident stated that the premises had now almost doubled in size and was frequented by much larger groups of people. The patio area was built a few months ago and had previously been a yard area for car parking. He said this was why there were no historical noise complaints – because until recently the patio area did not exist. He was concerned that if alcohol was served on the patio, it would cause noise nuisance from patrons. He did not object to the alcohol licence but said it should be aligned with the premises nearby to make sure it did not negatively impact on an already known problem. He was against a late-night licence and considered anything past 9pm too late.

Applicant

- 3.7 The Agent explained that the Applicant had many years of experience within the industry and asserted that the licence would not have a negative impact on the area. They had submitted an application for late night refreshments and were aware the patio was an issue for residents. The Applicant was keen to work with local residents and would be happy to accept conditions for the patio area.

- 3.8 The Agent stated that Police feedback had been taken into account when submitting the application. Also, that the premises was operating as a restaurant, and a condition requiring the sale of alcohol to be by waiter/waitress service to patrons seated at tables and ancillary to a main meal was included as part of the application.
- 3.9 She confirmed the premises had a capacity of 25-30 customers and the type of food offering did not encourage them to linger. Further, that the hours for operation of the restaurant were consistent with the matrix.
- 3.10 Despite the limited size of the patio, the Agent stated that the Applicant was keen to retain its use as an outside area. Also, there were toilets for customers' use which should help in addressing the urination problem.
- 3.11 She noted that the website entry "Enjoy good drinks in our bar" was a mistake and would be rectified.
- 3.12 The Agent was asked by the Panel what arrangements would be put in place for people who were queuing to sit in the restaurant. The Agent said that diners would be given set times to be seated.
- 3.13 In response to a question from the Panel regarding smokers, the Agent said smoking would take place at the front of premises. She said the type of food they serve will not give people time to smoke between courses.
- 3.14 The Panel asked who would be responsible for the day-to-day management of the premises. The Agent advised this would be undertaken by the Applicant, Mr Karwan Abba.

3.15 **Closing Submissions**

Each of the parties were given the opportunity to make their closing submissions and each reiterated the points they had made during the meeting. The Panel then retired to make their decision which is set out below.

Decision

- 3.16 That the Premises Licence in respect of Real Greek Gyros, 116 St James's Street, Brighton, BN2 1TH, be granted.

Reasons

- 3.17 The Panel has carefully read the report and relevant representations.

116 – 117 St James's Street is situated within the cumulative impact area (CIA). Our policy states that applications for variations in the CIA 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.

This special policy can only be overridden in exceptional circumstances. However, the policy is not absolute. The panel must consider the individual circumstances and merits of the application. If an application is unlikely to add to the cumulative impact of the area, it may be granted.

The council has adopted a matrix approach to licensing decisions. It provides a framework of what the licensing authority would like to see within its area and gives an indication of the likelihood of success or otherwise of any application. The Statement of Licensing Policy (SOLP) provides that the policy as represented in the matrix will be strictly adhered to, subject to several reservations. The matrix indicates that restaurants within the CIA with a terminal hour of midnight are likely to be approved, although Late Night Takeaways will not.

Relevant representations were received from local residents. The representations engaged the Prevention of Public Nuisance licensing objective and raised Cumulative Impact concerns.

116 St James's Street currently has the benefit of a licence authorising late night refreshment from 23.00 hours to midnight Monday to Saturday, indoors only. The applicant has been the premises licence holder since 2016. The variation application seeks to extend the licensed area into 117 St James's Street and to introduce the supply of alcohol for consumption on the premises between 12 noon and 23.30 Monday to Saturday and 12 noon to 23.00 on Sunday. The opening hours for the extended premises will remain as they currently stand – 11.00 am to midnight Monday to Saturday and from 12 noon to 23.00 on Sundays. The Licensing Officer advised that apart from one construction noise complaint in December 2021 no noise complaints had been reported in connection with the operation of the premises.

The Panel noted that the applicant had pre-consulted with both the Police and Licensing Authority. Agreement had been reached with the Police about conditions to be added in the event of the licence being granted. These are set out in the report.

At the hearing the applicant, Karwan Abba, was represented by Derya Yilmaz Teke. One local resident appeared to speak to his own representation, and to represent the other objectors.

The local resident reiterated his concerns as outlined in his written representation and explained that the recently constructed patio was immediately adjacent to his property. He was concerned that noise and smoking from patrons would disturb him in the evening, and in all likelihood the noise would increase with the amount of alcohol being consumed. He feared that a further outlet selling alcohol would only exacerbate existing problems such as parking, people loitering and urination in the street.

In the applicant's presentation and in response to questions a number of points were made, including:

- *Police feedback had been taken into account when submitting the application.*
- *The premises are operating as a restaurant, and a condition requiring the sale of alcohol to be by waiter/waitress service to patrons seated at tables and ancillary to a*

main meal was included as part of the application. The premises have a capacity of 25 -30 customers. The food offering does not encourage them to linger.

- *The hours for operation of the restaurant were consistent with the matrix.*
- *Despite the limited size of the patio, the applicant was keen to retain its use as an outside area.*
- *The website entry “Enjoy good drinks in our bar” was a mistake. A bar is not compatible with the waiter/waitress service condition.*
- *There are toilets for customers’ use which should help in addressing the urination problem.*
- *The applicant is happy to work with the Police and local community.*

The Panel have considered the individual merits of the application as well as the policy context. We considered the applicant’s detailed Operating Schedule and noted that the proposed conditions were consistent with a restaurant. There are conditions directed towards the prevention of crime and disorder and the prevention of public nuisance. A restaurant open until 12 midnight is consistent with the matrix. We are particularly concerned about the potential for late night noise arising from use of the rear patio area, given its proximity to residential accommodation.

Looking at the variation in the round, we considered that with appropriate conditions, the application could be granted. We did not consider that the restaurant or takeaway would add to the cumulative impact of the area, if suitably conditioned.

The licence is therefore granted subject to the following conditions: -

- i) The mandatory conditions
- ii) Conditions consistent with the Operating Schedule, as set out on pages 21 to 23 of the agenda
- iii) The following conditions attached to the existing licence for 116 St James’ Street:
 -
 - a) A sign shall be displayed in a prominent position showing opening times for the provision of late-night refreshment.
 - b) The licensee must take all reasonable steps to ensure that people on or leaving the premises conduct themselves in an orderly manner at all times and do not in any way cause annoyance to residents and people passing by the premises.
 - c) Customers will be discouraged from congregating outside the premises

(For the avoidance of doubt, all other conditions attached to the 116 St James Street licence no longer apply)

- iv) Conditions relating to the rear patio area to reduce the potential for noise.

- a) Use of the rear patio limited to no more than 4 customers at any time.
- b) The rear patio to be closed by 21.00 hours
- c) The rear patio to be cleared of chairs and tables by 21.00 hours.

The Panel consider that the imposition of these conditions is appropriate for the promotion of the licensing objectives.

We noted that residents had expressed concerns about breaches of planning control by the applicant, but that is not an area we can properly consider. Section 182 of the Licensing Act 2003 requires the Secretary of State to issue guidance to licensing authorities on the discharge of their functions under the Act. (the section 182 guidance). In relation to planning and licensing, the guidance is clear. They are separate regulatory regimes: -

14.64 The statement of licensing policy should indicate that **planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different** (albeit related) **matters**. Licensing committees are not bound by decisions made by a planning committee, and vice versa. However, as set out in chapter 9, licensing committees and officers should consider discussions with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.

Further the statutory guidance also makes it clear that the grant of any licence under the Licensing Act does not relieve an applicant of the need to seek planning approvals: -

9.41 In the context of variations or minor variations, which may involve structural alteration to or change of use of a building, the decision of the licensing authority will not exempt an applicant from the need to apply for building control approval, planning permission or both of these where appropriate

We note that a retrospective planning application for the conversion of two retail units to one was received in the period 14 to 20 February 2022.

Note: The Legal Adviser to the Committee confirmed that the decision letter to the applicants would include details of the appeal rights available to them.

The meeting concluded at 11.41am

Signed

Chair

Dated this

day of

