

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

10.00am 25 AUGUST 2011

COMMITTEE ROOM 1, BRIGHTON TOWN HALL

MINUTES

Present: Councillor Sykes (Chair); A Kitcat and Lepper

Officers: Adam Bates (Head of Tourism and Leisure), Bob Bruce (Principal Lawyer, (Manager of Commercial Projects)), Rebecca Sidell (Lawyer), Carl Hearsum (Highways Lawyer), David Fisher (Highway Enforcement Manager), Toni Manuel (Seafront Development Manager) and Jane Clarke (Senior Democratic Services Officer)

PART ONE

1. TO APPOINT A CHAIR FOR THE MEETING

1.1 Councillor Ollie Sykes was appointed Chair for the meeting.

2. PROCEDURAL BUSINESS

2a Declarations of Substitutes

2.1 Councillor Lepper declared that she was substituting for Councillor Hyde.

2b Declarations of Interests

2.2 There were none.

2c Exclusion of the Press and Public

2.3 In accordance with Section 100A of the Local Government Act 1972 ('the Act'), the Licensing Panel (Non Licensing Act 2003 Functions) 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).

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

3. BRIGHTON "O" HIGHWAY LICENCE

- 3.1 The Panel considered a report from the Head of City Infrastructure regarding an application from Paramount Entertainments for a Licence to place an observation wheel on Dalton's Bastion, Madeira Drive, which forms part of the public highway.
- 3.2 Mr Bennett, Paramount Entertainments and Mr Sinnatt, counsel for the applicant, attended the hearing to speak in favour of the application. Mr Benedict, on behalf of Mr Smyth, Mr Scoble, on behalf of the Kingscliffe Society and the Open Spaces Society, Ms Simpson, local resident, Mr De Kadt, local resident, Mr Tibbett, local resident, and Dr Thomas, local resident, attended the hearing to speak against the application. Mr Fisher, the Highways Enforcement Manager and Mr Bruce, Principal Solicitor, attended the hearing to present the application to the Panel. Ms Sidell, Lawyer, attended the hearing to advise the Panel, and Mr Hearsom, Highway Lawyer, attended the hearing to advise the Panel.
- 3.3 The Highways Enforcement Manager, Mr Fisher, introduced the report and stated that this application was for an observation wheel to be placed on the public highway on Dalton's Bastion, Madeira Drive. The wheel had been given planning permission and now the applicant was seeking permission to take up part of the highway. Public consultation had taken place a number of objections submitted. Although the application could be decided under delegated powers, in the interests of open and accountable democracy, the application had been brought before a Licensing Panel for determination.
- 3.4 The Principal Solicitor, Mr Bruce, addressed the Panel and said that he was present to put into context the Council's position in terms of its executive and planning functions. He explained that executive decisions were decisions made by the council administration through Cabinet, Cabinet Member Meetings or delegated officer decisions, and regulatory decisions were those made on a cross-party basis by a committee or panel. With this application the Council has four distinct roles as Landowner, custodian of the seafront, the Local Planning Authority and The Highways Authority. The Council's role today was as the Highway's Authority, and as such the Panel should only take into account relevant highways considerations when determining the application. These were a narrow set of issues which were set out in Panel report.

The Council aligned its twin roles of seafront custodian and Landowner under the Culture, Recreation and Tourism Cabinet Member Meeting, and consideration of this development had started under the previous administration. Earlier proposal related to the wheel sited it closer to the West Pier, although that application was withdrawn as the highway would have been too constrained.

The applicants had looked for a different site and at the Culture, Recreation and Tourism Cabinet Member Meeting; an agreement in principle had been made on this site in December 2010, with an Agreement for Lease subsequently granted in February 2011. Planning permission was granted on 19 May 2011. In July 2011 a license was granted to carry out strengthening works on the highway. Plans for a new Brighton wheel were made available, and formed part of the report. An additional platform area

would be provided to accommodate the wheel base. This ensured that the wheel did not impact significantly on the highway.

The lease would ensure that the seafront would not be adversely affected by the application. Some of the clauses in the lease were relevant to the Panel's considerations. The terms of the lease and the proposed highway licence had to be complied with. The lease included indemnity clauses, health and safety clauses, restriction of delivery times et cetera. The lease related to the subsoil beneath the highway and the platform on which the wheel was to be partially placed, since as a matter of law exclusive possession by way of a lease could not be granted over a highway.

The planning application had come to the Planning Committee on 27 April 2011. The Council had complied with consultation procedures and also sent out 552 letters to nearby residents and businesses, and included details of the application in the Leader newspaper and on the website. The planning application considered the impact on the seafront and surrounding residential areas, transport issues, sustainability issues, the impact on tourism and the economy, and the impact on pedestrians and cycling. The application was deemed acceptable by the Committee and a 5 year temporary permission was granted on 19 May 2011.

Seventeen conditions were contained in the planning permission, including requirements relating to opening times, noise, traffic controls and lighting. There were several conditions included that related to the Council's role as landowner to ensure the proper use of the wheel and a Section 106 Agreement was entered into. Section 106 contributions related to updates to sustainable transport provision in the vicinity. Many, if not all, of the objections made to this meeting regarding the wheel related to planning matters, but the Panel could not consider these as planning permission had already been granted. If people were still aggrieved regarding this decision, they would need to pursue a judicial review.

- 3.5 The Chair asked if there were any questions of the Officer's presentations.
- 3.6 Councillor A Kitcat noted there had been 22 representations against the application, and asked if there had been any representations in favour of it. Mr Fisher replied that within the representations there were a couple of letters that did not object to the principle of the wheel, but were requesting tweaks to the application.
- 3.8 Mr Benedict asked Mr Bruce whether it was practical for the objectors to the scheme to take the Council to Judicial Review regarding the decision. Mr Bruce replied that it was likely the challenge period for a Judicial Review of this decision had now expired, but this would have been the correct route to seek redress. The Licensing Panel was not the appropriate forum to seek changes to a planning decision. He agreed that objectors may need to engage a solicitor to submit a Judicial Review, but the costs of the application itself were quite modest.
- 3.9 Mr Benedict asked whether the lighting conditions relating to the planning application had been fulfilled. Mr Bruce replied that planning permission was granted subject to conditions, but this did not mean that conditions needed to be discharged immediately.

The lighting condition related to the submission of a scheme prior to the wheel's operation.

- 3.10 Mr Scoble from the Kingscliffe Society and the Open Spaces Society raised concerns that the objectors had only been given 3 working days notice of the meeting. The meeting by Executive Member, where the decision had been taken in principle, had not gone through any public consultation, and the Ward Councillors for the area had not consulted the public on the matter. He asked why this was. Mr Bruce replied that the Cabinet Member Meetings were part of the Council's regular timetabled cycle of meetings, with agendas published on the website and at the Town Halls, and were open to the public. The planning and property decisions had gone through the correct consultation procedures.
- 3.11 Mr Scoble asked if the majority of representations were objecting to the scheme. The Chair stated that the representations were published with the agenda and a matter of public record. Those present at the meeting today would receive the opportunity to clarify any objections they had made.
- 3.12 Councillor Lepper asked if the application had any impact on the rights of way legislation. The Highway Lawyer, Mr Hearsam replied that there was no dispute that Dalton's Bastion was a public highway. The issue is whether the grant of licence was in accordance with the policy. There was still room to access the highway around the proposed wheel, and it was felt that this application did comply with policy.
- 3.13 The Chair asked for representations from the objectors.
- 3.14 Mr Benedict began his representation and said that he was attending on behalf of Mr Smyth, and asked for the decision to be postponed. In his view objectors had not been properly notified of the meeting, and at the Planning Committee Councillors had objected to the feeling that this decision was being rushed through. He felt the licensing decision was also being rushed. Mr Benedict felt that both the Planning and Highways departments had not realised that a Highway permission would be needed to progress this application, and when it was realised, the decision process was rushed through to get the quickest decision possible. There had not been sufficient time for objectors to consult with legal advisors and make a proper case.

Mr Benedict further objected to the reference in the report and letters to the 'Brighton O' Highway Licence, when this structure was in fact the Brighton Wheel. Mr Benedict felt the two structures were originally very different and even located in different areas of the town. This had caused confusion and misunderstanding as to what was proposed by residents. It was for these reasons that Mr Benedict requested that the decision be postponed.

- 3.15 The Solicitor to the Panel, Ms Sidell, advised that the notice period for the meeting to comply with all of the statutory requirements including Access to Information Regulations, had been complied with. The agenda had been posted in sufficient time on the website and at the Town Halls. There were no grounds to support an adjournment of the meeting on this basis.

- 3.16 Mr Benedict believed that the mixed references in the agenda papers had confused and disadvantaged residents. The Chair responded that the application and site notices had stated the application was for an observation wheel at Dalton's Bastion, and this in his view was very clear.
- 3.17 The Chair asked if Mr Benedict knew of residents who had believed this Highway Licence was for the 'Brighton O', originally to be located on Hove seafront. Mr Benedict replied that there was definitely confusion amongst Kemptown residents as to what was being applied for. He also did not believe 3 working days notice to objectors of the meeting was adequate.
- 3.18 Mr Hearsom said that the Panel were convened to hear and discuss the Highways Licence. Public notices headed as 'Highways Licence for a structure on Madeira Drive on Dalton's Bastion' had been posted at the sites. There was nothing in the notice itself to indicate any confusion. Extensive consultation had taken place at the planning application stage with full details the location of the scheme made public.
- 3.19 Mr Scoble, representing the Kingscliffe Society and the Open Spaces Society, addressed the Panel and added that he had visited the CityDirect Officer and asked to view the maps relating to the application. One was found showing the pier and Madeira Drive, but this was illegible. Mr Scoble asked for the statement from the applicant that accompanied the plans, but this was not made available due to copyright permissions. Mr Scoble felt it was the Council's duty to ensure these maps were up-to-date and available for public inspection.

Mr Scoble had telephoned Mr Fisher to request a copy of the application, together with any additional information that was relevant, but he was told that the agenda and reports would be sent to all objectors the following week. He was not given details of the time or date of the meeting, but was told the meeting would be held under part VIIA of the Highways Act. Notification of the meeting had been three days before the meeting, and Mr Scoble did not think this had allowed objectors enough time to prepare for the case, and was not in the spirit of proceedings of the Licensing Committee. Most Licensing Panels allowed 14 days notice of the meeting, with a letter to the objectors. Mr Scoble was concerned because a great number of objectors who would have attended the meeting were on holiday. He felt they had been denied their right to a hearing under community law and this was unreasonable.

- 3.20 Mr Sinnatt responded to this and said that he felt that the large number of objectors present at the meeting was self-evident and that there had been enough notice and opportunity to object to the application. The Panel was under the auspices of the Licensing Committee and therefore submissions should be based on relevant licensing matters. All policies and laws had been complied with in terms of advertising the application and calling the meeting. In terms of the process for Licensing Panels, the point at which objectors had the opportunity to make a representation on a proposed licence was as a written representation when the application was submitted. Objections that considered the view of the seafront were not relevant as this was not a licensing matter. It was Mr Sinnatt's view that every objection in the papers referred to obstructed views on seafront at Dalton's Bastion, and this indicated that resident's were aware that the scheme was different to the originally proposed Brighton O scheme.

- 3.21 Mr Bruce added that all objections had to be made within 28 days of the site notice going up. The date of the Panel meeting was not an extension to the representation period, and only those who had written objections had the right to make verbal representations in respect thereof at the meeting. The role of the objectors at the meeting was to speak to their objections to the licence application, and not to any other matters. Mr Bruce said it was clear on the papers and on the site notice that an observation wheel was being applied for at Dalton's Bastion. It was unfortunate if residents believed the scheme was still the same as the original Brighton O scheme.
- 3.22 Mr Scoble remained unhappy with the length of notice the objectors had been given regarding the scheduling of the meeting. The Chair stated there were no grounds for postponement. He and the Panel were satisfied that all notices and protocols had been complied with and it was evident that residents had been able to make representations due to the number of letters included on the agenda. The issues had been fully discussed, with legal advice given, and the meeting would continue.
- 3.23 Mr Benedict continued with his representation and said that Mr Smyth works long hours and enjoyed strolling down to Dalton's Bastion in the evening for the views. This area had a unique amenity value, and the structure would impact on access to beach below. Mr Smyth was concerned that guests at his hotel would not have access to the beach. There would be a significant impact on road traffic levels and an increase of pedestrians on the highway.

Council policy referred to supporting business. Mr Smyth had attended the public meeting two nights ago and stated that as a business man he would be most affected by these proposals, but had not been consulted by the Council at all. He felt it would have a significantly negative effect on his business.

In Mr Benedict's view, licenses should be issued to support business, but objectors had canvassed 50 or so businesses in the area, and only 3 had encountered any consultation from the Council on the issue. They had been sent a brief document asking whether the investment in the wheel would benefit the Brighton & Hove economy and whether they believed the Brighton Wheel would attract customers to their business. No description of the wheel was included, how it would be illuminated or how it would block the highway.

Many business owners he had spoken to oppose the application, and only one person was in favour of it. Many in the area were completely unaware of the plans. It had been stated that the Grand Hotel and the Brighton Metropole Hotel had expressed support for the development, and yet these businesses had opposed it when it was to be sited in front of their business. There had been no consultation conducted with Madeira Place, and none of the residents were aware of the licensing issue until alerted by Mr Scoble. To his knowledge, similar wheels had not been erected on a public highway in any other location around the world for the reason that the numbers of customers using the wheel would make areas around it unusable.

- 3.24 The Chair asked if there were any questions of Mr Benedict's representation.
- 3.25 Councillor Lepper asked if the main objection in Mr Smyth's letter was that he would not be able to access the public highway late in the evening. Mr Benedict said that Mr

Smyth was objecting to the placing of the wheel at Dalton's Bastion. He wanted his right to use the area protected, and the views that the area offered.

- 3.26 Councillor Lepper asked where the Kelvin Guesthouse was situated. Mr Benedict replied that it was immediately in front of the wheel on the western side of Madeira Place.
- 3.27 Councillor Lepper queried whether there were steps from Dalton's Bastion that led down to the beach. Mrs Simpson replied that there was a set of steps at the bottom of Madeira Place.
- 3.28 Councillor Lepper asked, if these steps were to remain accessible, how this application would prevent Mr Smyth from accessing the beach. Mr Benedict replied that Mr Smyth would not be able to walk across the area because it was blocked by the wheel. He would be able to get around it, and could access a corner of the site, but not actually walk on most of Dalton's Bastion.
- 3.29 Mr Sinnatt asked if Mr Benedict was aware that Mr Smyth did not qualify as an owner with a frontage onto the site, and therefore did not qualify as a consultee. Mr Benedict was unaware of this and could not address the issue.
- 3.30 Mr Sinnatt asked that, save for fact that Mr Smyth could not access the area the wheel was placed on, it was true to say the scheme would not stop him from access any part of the highway or the beach. Mr Benedict replied that Mr Smyth was objecting to the fact that he wouldn't be able to walk across Dalton's Bastion, and due to the number of customers that the development was likely to generate, he would no longer have easy access to the beach.
- 3.31 Mr Sinnatt asked if Mr Benedict was aware that there were two other sites in the country where this wheel design was sited on a public highway. Mr Benedict was not aware of this.
- 3.32 Mrs Simpson, local resident and Chair of Van Allen Building, began her representation. She felt that Dalton's Bastion was an obscure reference to the location of the site, and very few people knew where it was. She believed it was misleading to call the area this. Mrs Simpson had lived in Brighton for 34 years and looked out over the area from her flat, and walked over it every day. She did not think it was necessary for the wheel to be located here, and noted that when the Metropole had objected, the location was moved. Now the location was in a more residential area the Council seemed to be supporting it.

Mrs Simpson felt the wheel should be placed further along the coast where it would not interfere to the finest architectural seafront in country. She had watched tourists over the course of the summer walking and cycling in the area as the support work had been undertaken. On a sunny day the area was very crowded, and when there were events on Madeira Drive such as the vintage car run it would be impossible to traverse with the wheel taking up space. The wheel would unnecessarily obstruct the highway and restrict access to the Volks Railway and the beach. It would severely compromise access for those in wheelchairs or using buggies.

There was an opportunity to develop this area properly, but Mrs Simpson felt that with the wheel here it would be just be more of the same. The Seafront Regeneration Company had pulled out of the area because of the wheel proposals. Whilst the Council had a very keen policy on where A-boards are placed on public highway, it seemed here they were placing a big wheel in front of seafront architecture and with no toilet facilities available.

- 3.33 The Chair asked if there were any questions of Mrs Simpson's representation.
- 3.34 Mr Sinnatt asked if Mrs Simpson had inspected the plan in detail, which showed that the green area was allocated for queuing and the orange area was to remain clear at all times, which was a very large public area. Mrs Simpson replied that she had lived on the seafront for 34 years, and in the light of that experience she knew that hordes of people were being forced onto the road and into the cycle lane because of the support works, and the wheel would create the same problems.
- 3.35 Mr Fisher said that the Council had licensed construction for the hording at the moment. The area currently in use was larger than the wheel base. The minimum amount of pavement that would be available once construction was complete would be 9 meters. There would be clauses to ensure the area remained clear and that no access to the slopes or steps down to the beach would be obstructed at any time. This would be enforced by Highways Team and Seafront Team.
- 3.36 The Chair asked whether there would be fencing around the yellow area on the plan to control the number of people in the wheel area and Mr Fisher replied that this was correct.
- 3.37 Mr De Kadt, a local resident, began his representation, and said that big wheels could obviously be fun. In the present case, this wheel would give a good view of the sea and coastline, but in its current siting it would also give a view into the homes of those living immediately opposite. Mr De Kadt felt it should be called the "Peepers Wheel". He did not believe the wheel should be placed on the public highway. He had used the area regularly since 1974 and felt this application was not acceptable.

Mr De Kadt understood the importance of generating income, but felt it was also important to maintain and improve the character of the area. The effects of noise and lights would be dreadful, but would also cheapen the seafront and harm the image of the city as it was projected to others. Mr De Kadt felt the wheel would make the seafront look like a cheap funfair. He felt the city should be striving to attract people for its history, culture and monuments and enhancing these for all.

- 3.38 The Chair asked if there were any questions of Mr De Kadt's representation, and there were none.
- 3.39 Mr Brooks, a local resident, began his representation, and said that as a local resident he had used the seafront regularly, and as a citizen he should be allowed to walk up to seafront and use it. The Council should protect this right.

- 3.40 Mr Benedict added that the Bastion was created in 1930s as a unique viewing platform to offer unique views of the area and the sea. He would not be able to place his hands on the historic railings anywhere else on the seafront if this application went ahead.
- 3.41 Mr Scoble added that in his view, this was a question of joined up government. The Council had a duty to keep a set of the definitive maps available, and in not keeping them, this restricted his ability to give a proper objection. He had requested a copy of the application and had not been able to see it, and this again restricted him in forming an objection. Mr Scoble again raised the issue of a right of a fair hearing under common law. Objectors were not able to hire expert witnesses in such a short amount of time, and the issue of community law was high in the minds of all of the objectors.

He questioned why it was stated that a diversion of the public highway was not required, and why no traffic surveys for pedestrians or traffic movements on a very congested part of the highway had taken place. Mr Scoble noted that when the weather was good people would stand 3 deep to look at the unique view that Dalton's Bastion provided. He had witnessed this happen on numerous occasions, and related traffic jams on Madeira Drive then occurred. He was concerned for families using the beach and those accessing the area. They had the right to go down to the beach, but only a very narrow gap was provided for them if the wheel was built. He asked if the disabled had been considered in their use of this area.

Mr Scoble referred to other users as well, such as those using the Volks Railway and motorcyclists who meet at the opposite cafes, and the private cars using the area. This was in his view the most congested part of the seafront for cars and pedestrians. A very large Ferris wheel would bring in more visitors at the same time when the area was already congested. Mr Scoble couldn't see how safe use and access could be ensured when all of this was going on. The wheel proposals were a danger to all and would distract drivers in the area, with a potential to distract pedestrians crossing the road also.

Mr Scoble referred to a European grant funded study that was being conducted for the Kemptown area in relation to noise disturbance. It had taken local residents 5 years of complaining about the effects of noise in the area to get this far. This wheel would be in the middle of the study area and would have an impact on noise levels. If the European study was accepted, the European Union might provide the funds to make positive changes to the area.

Finally, Mr Scoble felt that the residents had a claim to a right of way and this should be protected. It was a unique area of the seafront and views across the sea and inland to the terraces and buildings behind the wheel area were listed. He asked that the Panel conduct a site visit to see this unique area before making a decision. The Open Spaces Society had given their opinions on the scheme, and felt that it was accepted that this is a public highway. They were concerned about creating a bottleneck for access to the beach. Mr Scoble asked the Panel to refuse the application on these grounds, as he felt that no proper studies had been conducted on the usage of the area.

- 3.42 The Chair noted that the reduction in the width of the access looked to be around 4 metres, and did not feel this constituted a large reduction. He asked if there were any further questions.

- 3.43 Mr Sinnatt replied that the remaining width would in fact be 7 metres, but in any event it was at least comparable with the width of the steps. He did not think the wheel would be a distraction for road users any more than the Brighton Pier was when driving in this area.
- 3.44 Mr Scoble said that the Civic Trust in Yorkshire had refused a similar application because of the potential for distraction. There had been no survey conducted to assess what impact this would have on pedestrians and traffic.
- 3.45 Mr Sinnatt asked if Mr Scoble thought the wheel would be more of a distraction than the Pier and Mr Scoble replied that he did. There were no lights on the pier late at night, and it had already been established in York that this structure would create a distraction. It would also be 12 times the brightness of the Pier.
- 3.46 The Head of Tourism & Leisure, Mr Bates, said that the original purpose of Dalton's Bastion was as a roof structure to provide cover for those bathing from the Pavilion, and those getting off the end of the Volks Railway, and not as a viewing platform.
- 3.47 Mrs Simpson believed that the Palace Pier was owned by the Dalton family, and this area had been bequeathed by the family for access to the beach. There was an area designated around the London Eye that people were not allowed to queue on, and Mrs Simpson did not feel the provision for the Brighton wheel was large enough.
- 3.48 The Chair responded that the London Eye had a very small queuing area, but the plans for the Brighton Wheel seemed larger.
- 3.49 Mr Brooks asked what permission had already been given. Mr Bruce replied that permission had been given for preparatory work. If the licence wasn't granted any work that has been done would need to be undone.
- 3.50 Mr Sinnatt, counsel for the applicant, began his representation and stated that there was nothing within the objections that formed relevant objections under Section 115(E) of the Highways Act. There was also nothing that has been said within the meeting that could be considered a valid objection. The issues the Panel needed to look at were quite narrow. He recognised that some objectors had asked about natural justice, but felt that this Panel had given an opportunity for all to fairly air their arguments. There were misconceptions around what was a valid objection under Section 115(E), which he agreed was understandable, but it had already been noted that this hearing was not an opportunity to re-run planning arguments that had already been dealt with.

Mr Sinnatt said that the powers under Section 115(E) gave the Council the power to fully utilise the area. Any application to place items on the highway would take that area away from use by the public, but the purpose of Section 115(E) was to encourage economic development and to allow businesses to generate income on the highway, and for the local area. The only relevant objection to this power was that the item would create an unacceptable obstruction. This highway was not part of a throughway, and the area that would continue to be provided as useable highway would be very significant still. He added that taking away a view was not a valid objection.

- 3.51 Mr Coomber, on behalf of Paramount Entertainments, began his representation and said that he was the Planning Consultant responsible for the application. He was also a Kemptown resident. Some of the issues raised today had been fully explored as part of the planning application, or were mitigated through conditions on the planning permission. A Highways Management Plan meant that construction during development would not obstruct highway, and this was achieved through condition. An Access Statement had also been provided with the planning application to ensure disabled access was fully addressed within the project. Any overlooking objections had also been dealt with as part of the planning application. The closest pod on the wheel to a living room window was around 100 meters, and this was far in excess of windows facing other windows in the Kemptown area. Any issues relating to noise and queuing would again be controlled by planning condition. A Transport Assessment had been conducted and the developer was working with the Highway Authority to develop a Traffic Management Plan. A Green Travel Plan was also being provided.
- 3.52 Mr Sinnatt added that there were no frontages for this site within the meaning of the Act. He accepted there were people in the locality, but they do not qualify as owners with frontages.
- 3.53 The Chair asked if there were any questions of the applicant's representations.
- 3.54 Councillor Lepper asked how the queuing area would be barriered.
- 3.55 Mr Coomber said that the area would be dealt with pursuant to the planning consent that required a queuing management plan. Details were being drawn up as to how this would be managed. There would be no queuing on the orange area and most of the queuing would be within the area of the wheel itself.
- 3.56 Mr Sinnatt said there would be barriers to separate queuing people and passing people. This would also help with Council Officers who were monitoring the situation.
- 3.57 The Chair asked to what extent the applicant's assessment of people using the area had indicated it may become overloaded. Mr Coomber replied that the long area on the plan was the overspill area, which would be used if the attraction was incredibly popular. It was anticipated that most of the queuing would be at the base of the wheel. There would also be ticketing arrangements in place to avoid people waiting a long time in front of the wheel for a chance to ride it.

Mr Sinnatt added that the green area on the plan was two meters wide. The remaining area of public highway was 9 metres wide. A substantial area of highway was still available for people to pass and this was a very minimal area. The proportions were far larger than that provided at the Brighton Pier, and that area coped well with high volumes of people.

- 3.58 Mr Benedict asked if the applicant agreed that the objectors had a right to instruct legal representation. Mr Sinnatt replied that he did not think it was necessary for all parties to be legally represented before the meeting went ahead. He did understand that it was difficult for non-professionals to distinguish between planning and licensing matters however.

- 3.59 Mr Benedict asked if the applicants were aware of how many events on Madeira Drive required special measures. Mr Sinnatt replied there were around 28 events on Madeira Drive in any one year that required the whole area to come under whatever permissions were necessary at the time.
- 3.60 Mr Benedict asked why the Highways Licence had not been applied for at the time of the planning application. Mr Coomber replied that it had not been within his remit or instructions. He had been made aware through his client once separate other controls were recognised.
- 3.61 Mr Benedict asked why the planning department had not noticed a highways licence was needed for this scheme. Mr Bruce replied that the Council was aware the area was public highway. He did not believe these questions were relevant as it was clear a highways licence had been applied for.
- 3.62 Mr Benedict noted that whilst there had been cross party support at the Planning Committee meeting, there was evidence that there was extreme anxiety expressed over the scheme, and 5 abstentions were made at the meeting. Mr Coomber replied that the case had been made at the Planning Committee meeting, with numerous members of the public present to give views on planning matters.
- 3.63 The Chair ended the line of questioning and said that only licensing matters would be considered at the Panel meeting.
- 3.64 Mrs Simpson asked for a definition of what was considered frontage where people were able to object. Mr Sinnatt replied that under the terms of the Act, what took place on the other side of the road was irrelevant, as it did not front the public highway up to the middle of the road. Other buildings would be more relevant if the route was a major thoroughway, but it wasn't.
- 3.65 Mrs Simpson asked what the width of the queuing area was. Mr Fisher replied that the narrowest point was approximately 9 metres.
- 3.66 Mrs Simpson asked if this included the cycle lane and Mr Fisher replied that it did. The cycle lane was approximately two meters wide.
- 3.67 Mr Sinnatt said the area between the highway and cycle lane needed to be sufficiently wide for the pedestrians to cross the roadway on the other side of the cycle lane safely. The public highway on the side near the beach was significantly larger than this, and he felt this indicated there was enough room for all users.
- 3.68 Mrs Simpson asked how high the barriers would be where the people were queuing. Mr Sinnatt replied they would be the same as London Eye, which was around waist height.
- 3.69 Mrs Simpson asked how many people would be using the wheel at one time. Mr Coomber replied that a combined number of people would be around 500, with 240 queuing at the base of the wheel.
- 3.70 Mr Sinnatt added that a timed ticketing system would be in place so that people could come back at the right time. Any overspill on to the orange area of the plan would be

moved on, and people would not be allowed to queue in this area as part of the conditions.

- 3.71 Mrs Simpson asked if an Environmental Impact study had taken place. The Chair reminded the meeting that they were considering only licensing matters and not any planning matters. An Environmental Impact study would have taken place as part of the planning process.
- 3.72 Mr Scoble asked for confirmation that there would be an additional 260 people coming off the wheel and congregating in the area. Mr Sinnatt replied that there would be 260 users on the wheel, which included all those coming on and off the wheel. The green strip area could accommodate 240 people if it was a very busy day with queuing. The structure was much smaller than the London Eye, but a much bigger queuing capacity has been provided for. There would be a maximum of 280 on the wheel, 240 on base, and 240 in queuing area. Arrangements for queuing were a planning consideration however, and it was not relevant to the amount of land being taken away from the public highway, which was the pertinent licensing issue.
- 3.73 Mr Scoble asked if the applicant's had considered the extra people that would be traversing the area. Mr Coomber replied that the Transport Assessment estimated that a large proportion of users would be part of a combined trip to see the wheel and another attraction in the city. This reduced the number of unique trips created because of the wheel. All of the Transport Statements and the Green Travel Plan were publicly available. The scheme had been very thoroughly explored and vetted through the planning application system.
- 3.74 Mr Scoble asked whether it was correct that the Local Authority had a duty to protect the rights of the public to enjoy the public highway. Mr Sinnatt replied that the Highways Act protected the right of way, not the right of view on the highway. Mr Scoble replied that this right of way was provided specifically for the view.
- 3.75 Mr Hearsom addressed the Panel and said that the right to enjoy the highway was interpreted as a right to pass and re-pass. It was the right of passage that was important, and not a right to a view. The statutory powers in VIIA of the Act allowed for the Council to decide on how the public highway could be used.
- 3.76 The Chair asked for those making representations at the meeting to sum up their points.
- 3.77 Mr Fisher gave his final statement and said that the Highways Authority was satisfied that this scheme would not cause an obstruction to the highway, and believe the queuing system would be robust. Stewards would be provided for queues, with timed ticketing available, and so it was not envisaged that the wheel would ever reach a capacity that could not be handled. It was felt that all conditions placed on the permissions and leases could adequately be met by the application.
- 3.78 Mr Bruce had nothing further to add.
- 3.79 Mr Benedict said it was unfair that the Council and the applicants were allowed to bring legal representation to the meeting, but the objectors were not able to. He also did not believe that three days notice of the meeting was adequate notice, or provided objectors

with enough time to make a case. The scheme had been moved along the coast from Hove to the Metropole and now to Dalton's Bastion. Various groups had objected to the siting of the structure as none wanted it on public highway in their part of town. They were now in support of the application under the official consultation because it was no longer in their area. Kemptown did not have large businesses to provide legal advice at short notice and so were unable to be fairly represented. The wheel should be granted on the basis of supporting local business, but it did not support Kemptown local business. Businesses in St James Street had not been consulted. The consultation had been targeted to achieve positive views about the scheme. The public were entitled to enjoy the highway and he believed this licence application would remove this.

3.80 Mrs Simpson had nothing further to add.

3.81 Mr De Kadt had nothing further to add.

3.82 Mr Scoble gave his final representation and said he did not believe the objectors had been given a right to a fair hearing. Although they had been given the opportunity to speak, they had not been given the opportunity to produce a final detailed argument. There had been no opportunity to contact experts and witnesses. He insisted on behalf of all the letters of objection that Section 130 was relevant and related to the protection and use for enjoyment the public highway in this area. The reason that this part of the public highway was created was for the view. The enjoyment of the highway was synonymous with the view, and this was a unique view.

Mr Scoble was concerned that lights would be flashing on a very high wheel and people would be looking up and creating a distraction. He remained highly concerned that the Disability Act had not been considered properly. It was a public right of way, given to the people of Brighton to enjoy. If the highway was being taken away from the people, it should go back to the Dalton family who had bequeathed it. He remained concerned that there were no definitive maps of the area; there was no statement with the maps, which were also illegible. Objectors had been denied access to proper information and deprived of their right to a fair hearing. He felt the wheel could be moved further along the coast. This area was always known as the quiet seafront, situated between the Pier and the Marina. Families visited the area because of this. He did not feel there had been a proper study conducted on the numbers of people using the area when the wheel was built, and felt that Dalton's Bastion needed better protection.

3.83 Mr De Kadt gave his final representation and recognised that planning and highways considerations were different, but felt that not all of the information had been made available, and he was very concerned that the Panel might be making a decision based on incorrect information.

3.84 Mr Sinnatt gave his final representation and said that all of the legal and procedural advice that had been given by Officers had been correct. All of the lawyers present at the meeting agreed with how the law should be interpreted, and only relevant licensing matters should be considered today. Normally a decision of this nature would be delegated to an Officer, but because of the depth of public feeling it was felt that a public meeting should be arranged. The purpose of the meeting was simply for those who had submitted objections to clarify their objections. In any event, nothing had been raised at the meeting that should be regarded as a highways issue. If enjoyment of the highway

was protected to include views, there would be no other use allowed anywhere, but this was clearly not the case. Mr Sinnatt clarified that the purpose of Section 115(E) was to be permissive and allow such things on the highway that did not obstruct access. The key matter here was how much of the highway would be remaining after this scheme was built. There would be 2 meters of highway taken up, and 9 metres remaining for public use.

3.85 Ms Sidell said that the application needed to be considered on its merits in relation to relevant highways issues and policies, as set out in the report. Representations could be considered if they related to highways issues.

3.86 **RESOLVED** – That the Panel have considered the report in front of us and listened carefully to all the representations and submissions made today.

This is an application to place an object on a public highway under part VII A of the Highways Act 1980.

We have received detailed submissions from residents, but are mindful that many of these refer to planning matters and cannot form the basis of our decision today.

We have based our decision on the relevant highway considerations and council policy, as set out in the report.

The panel concludes that granting this licence will not lead to unreasonable obstruction of the highway and that a sufficient width of pavement will remain for the safe use and access along Madeira Drive and from Madeira Drive down to the beach.

The panel has therefore decided to grant the application for a licence to place an observation wheel on the public highway at Dalton's Bastion, subject to the draft licence conditions set out in appendix 4 of the report.

The meeting concluded at 2.15pm

Signed

Chairman

Dated this

day of