

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

11.30am 25 APRIL 2018

HOVE TOWN HALL, ROOM G70

MINUTES

Present: Councillor; Morris, O'Quinn and Phillips

Officers: Emma Bullen (Licensing Officer), Liz Woodley (Senior Solicitor) and Tom McColgan (Democratic Services Officer)

PART ONE

100 TO APPOINT A CHAIR FOR THE MEETING

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

101 WELCOME & INTRODUCTIONS

101.1 All parties were welcomed to the meeting and everyone present introduced themselves.

102 PROCEDURAL BUSINESS

102a Declaration of Substitutes

102.1 There were none.

102b Declarations of Interest

102.2 There were none.

102c Exclusion of the Press and Public

102.3 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).

102.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of Item 103 onwards.

103 ISTANBUL TURKISH CUISINE LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

103.1 The Panel considered a report of the Executive Director of Neighbourhoods, Communities and Housing in relation to an application for variation of a premises license. Present at the hearing were: Donna Lynsdale (Licensing Authority) and Mark Thorogood (Sussex Police).

(2) The Panel noted that the applicant had sent their apologies and had requested that the application be considered in their absence.

Introduction from the Licensing Officer

(3) The Licensing Officer introduced the application:

“This is an application for a variation to the existing Premises Licence issued for Istanbul Turkish Cuisine, located at 85-87 Preston Street, Brighton.

The applicant, Servet Celik, seeks to:

- extend the current hours of alcohol service until 1am on Wednesdays, Thursdays, Fridays and Saturdays (start time is 10am and current end time is midnight Mon - Sat);
- allow alcohol sales from 12pm until 1am on all Bank Holiday Sundays (current end time is 11.30pm every Sunday)
- add Recorded Music to licence, to provide DJ music on all of these nights from 9.30pm until 1am;
- add Late Night Refreshment between 11pm and 1am on all of these nights, to be able to provide hot food and drinks

“The applicant describes the premises as an 80 cover restaurant and I confirm that the licence has a condition on it which deems the premises a restaurant. There are currently no conditions attached to the licence under Annex 2 (this is because it is a converted licence that has never been varied).

“Two relevant representations objecting to this application were received from Sussex Police and from the Licensing Authority. The representations contained relevant concerns relating to the Prevention of Crime and Disorder and the Prevention of Public Nuisance. Cumulative Impact was also cited as a concern.

“An agreement of conditions was made between the applicant and the Environmental Protection team.

“This premises is situated in the city's Cumulative Impact Area. The Special Policy for which states that applications for variations which are likely to add to the existing Cumulative Impact of the area will be refused following relevant representations. This

presumption of refusal can be rebutted by the applicant if they can show that their application will have no negative cumulative impact on licensing objectives.

“The Council's Statement of Licensing Policy states that this special policy is not absolute. Upon receipt of a relevant representation, the licensing authority will always consider the circumstances of each case and whether there are exceptional circumstances to justify departing from its special policy. If an application is unlikely to add to the Cumulative Impact of the Area, it may be granted. (2.6.9)

“I remind the Panel that each application is still considered on its own merits and there is discretion to depart from the policy where justified.”

Questions to the Licensing Officer

- (4) In response to Councillor O'Quinn, the Licensing Officer stated that that plan had been brought forward from the original licence which was issued some time ago. There were now minimum standards for layouts but these had not been implemented when the layout was submitted.
- (5) In response to Councillor Morris, the Licensing Officer stated that the establishment was still operating as a restaurant after being taken over by the new owners several years ago. There was seating outside and the restaurant served substantial hot food.

Representation from Sussex Police

- (6) Sussex Police stated that the application was counter to the licensing objectives. The premises was in the cumulative impact zone (CIZ) which meant the applicant had to show how the variations applied for would not have a detrimental impact on the area. The application stated that SIA registered security staff would be hired for busy DJ nights but gave no definition of what 'busy' meant. What 'DJ nights' entailed was also not detailed in the application. If the applicant was planning to operate as a club on these nights this would have a substantial impact on the street which was a focus of alcohol related crime and disorder. The Ward had the highest rates of violent and sexual crime reported in the city and encouraging additional alcohol consumption would affect the Police's ability to address these issues. Sussex Police presented a list of proposed conditions should the Panel be minded to grant the application to the Panel and parties present.

Questions to Sussex Police

- (7) In response to Councillor O'Quinn, Sussex Police stated that there were no historic issues with the premises specifically under either the current or previous operators.
- (8) In response to Councillor O'Quinn, Sussex Police stated that the applicant had not contacted the Police before submitting the application.
- (9) Councillor O'Quinn stated that she regretted that the applicant was not present to explain what a 'DJ night' meant in the context of the application and asked the Police what their concerns were about this.

- (10) Sussex Police stated that 'DJ nights' suggested vertical drinking in a club like setting rather than eating substantial food in a restaurant. If this was the case customers may leave the premises more intoxicated than customers leaving a restaurant and in a different mind-set.
- (11) In response to Councillor Morris, Sussex Police stated that the current licence provided very little to support the licensing objectives as it was an historic license.
- (12) In response to Councillor O'Quinn, Sussex Police stated that even if customers leaving the premises were not committing crime they may be victims as the street already had high levels of alcohol related police call outs. The street was also residential from the first floor up and increasing the number of people in the street late at night would have a negative impact on the residents.

Representation from Licensing Authority

- (13) The Licensing Authority stated that the application ran counter to licensing policy in asking to operate a DJ night until 1am in the heart of the CIZ. The applicant had provided no evidence for how they would uphold the licensing objectives in their application. The ward was the worst for alcohol related police call outs and the second worst for alcohol related ambulance call outs in the city.

Questions to the Licensing Authority

- (14) In response to Councillor O'Quinn, the Licensing Authority stated that she had not visited the premises and had not been contacted by the applicant before they put in the application or concerning her objections after the agenda for the hearing had been published.
- (15) In response to Councillor Morris, the Licensing Authority stated that the conditions agreed by environmental health of recycling pick up between 7 am and 7pm were not unusual.
- (16) In response to Councillor O'Quinn, the Licensing Authority stated that an 11pm limit on having doors and windows open was informed by the previous licensing regime. Noise is now assed by looking at its character and frequency but despite this 11pm was still used as a guide for conditions.
- (17) Councillor Morris canvased the parties present about placing a condition for the licence for a midnight terminal hour rather than 1am as applied for.
- (18) Sussex Police stated that they had no objection to a restaurant opening until midnight but the application suggested that the premises would be operating club nights. The Police felt that there needed to be assurances from the operator that the premises would only be a restaurant before any variation to the license could be granted.

Summaries

- (19) Sussex Police stated that the application was outside of what is provided for in the licensing decision matrix and that the application did not provide adequate reassurances that these variations would not impact upon the CIZ.
- (20) The Licensing Authority stated that the application did not demonstrate any exceptional circumstance that would justify granting a licence outside of the licensing decision matrix.
- (21) The Licensing Officer stated:

“The applicant has applied to extend the current hours allowed for the sale of alcohol and to add Recorded Music and Late Night Refreshment to the Premises Licence.

“Two representations remain outstanding against the application and an agreement of conditions has been reached with the Environmental Protection team.

“Licensing Guidance states that: In determining this application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the steps that are necessary to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- the Section 182 Guidance itself; and
- its own statement of licensing policy

“The question being asked of the Panel today is - has the applicant demonstrated that their application to vary will have no negative cumulative impact.

“If it is unlikely that the application will add to the Cumulative Impact or the applicant has demonstrated that it won't impact then the Panel should consider granting the application

“If the panel believe the application will add to the existing Cumulative Impact and the applicant has failed to demonstrate how they would counteract that negative impact the Panel should consider refusal. If Panel decides to refuse, it would need to demonstrate that granting would undermine a licensing objective and conditions would be ineffective in preventing problems.”

Decision

“As a preliminary issue, the Panel considered whether it should hear the application in the absence of the applicant. Having regard to the power in Regulation 20 of the Licensing 2003 (Hearings) Regulations 2005, and the applicant's statement in an email dated 20 April 2018 to EHL Safety “ I will not be in attendance at the hearing but agree it should proceed” the Panel considered it reasonable to proceed.

“The Panel has read all the papers including the report and relevant representations and listened to all the submissions made today.

“This is an application for a variation of the premises licence for premises located within the Cumulative Impact Zone (CIZ) and therefore subject to the special policy on cumulative impact as set out in the council’s Statement of Licensing Policy. The application seeks to extend the hours for the supply of alcohol on the premises to 1 am on Wednesdays, Thursdays, Fridays and Saturdays and to allow alcohol sales until 1 am on all Bank Holiday Sundays. Additionally, it seeks to add recorded music on these nights from 21.30 to 01.00 and late night refreshment between 23.00 and 01.00. The Panel noted from Appendix A (page 17) that DJ nights were proposed.

“Our policy states that applications for variations which are likely to add to the existing cumulative impact will be refused following relevant representations unless the applicant has demonstrated that their application will have no negative cumulative impact.

“However, the policy is not absolute. Upon receipt of a relevant representation, the licensing authority will always consider the circumstances of each case and whether there are exceptional circumstances to justify departing from its special policy in the light of the individual circumstances of the case. If an application is unlikely to add to the cumulative impact of an area, it may be granted. The impact can be expected to be different for premises with different styles and characteristics.

“The council’s Statement of Licensing Policy also includes a matrix approach for licensing decisions, with a terminal hour for all classes of licensed premises in a particular area. It provides a vision of what the Licensing Authority would like to see. The premises, the subject of this application, are predominantly a restaurant. The matrix indicates that the terminal hour for restaurants in the CIZ is midnight, although there is discretion to depart from the matrix in exceptional circumstances.

“Relevant representations were received from the police and licensing authority. The principal concerns were that extending the permitted hours and adding licensable activities were likely to add additional burdens for the responsible authorities. We accept that Preston Street is already saturated with late opening premises, and is a challenging area for the Police, especially at weekends and Bank Holidays.

“The panel considered that the application was not clear, particularly with regard to the proposal for busy DJ nights or hiring of SIA registered door staff. There had been no prior consultation with the Police, which may have assisted in clarifying these issues.

“Further, there was no mention of the Statement of Licensing Policy, CIZ or matrix in the application. Consequently, the panel was not satisfied that the applicant appreciated the significance of the CIZ designation or fully understood the responsibilities attaching to the position of premises licence holder.

“The Panel were particularly concerned about the proposed DJ nights. It appeared that these would change the nature of the premises and increase the risk of customers dispersing into Preston Street, en masse, at the end of an event, in contrast to the staggered dispersal of patrons from a traditional restaurant. Although at street level Preston Street is predominantly commercial, there are residential units above most of the shops, and a block of flats immediately to the south of 85 – 87 Preston Street.

“We do not believe that the applicant has demonstrated that there would be no negative cumulative impact arising from this variation or that there were any exceptional circumstances. On the contrary the panel consider that this variation would undermine the licensing objectives of prevention of crime and disorder, public nuisance and public safety. The application is therefore refused.

“The panel noted that a more up to date plan would have assisted its understanding of the premises. “

104 KAMPAI COCKTAILS LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

104.1 The hearing for this application was cancelled following the withdrawal of the representation made by a local resident.

The meeting concluded at 12.30pm

Signed

Chairman

Dated this

day of