

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

10.00am 15 JUNE 2018

HOVE TOWN HALL, ROOM G90 - HOVE TOWN HALL

MINUTES

Present: Councillor ; Deane, Hyde and O'Quinn

Officers: Rebecca Sidell (Legal Adviser), Sarah Cornell (Licensing Officer) and Tom McColgan (Clerk)

PART ONE

1 TO APPOINT A CHAIR FOR THE MEETING

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

2 WELCOME & INTRODUCTIONS

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

3 PROCEDURAL BUSINESS

3a Declaration of Substitutes

3.1 There were none.

3b Declarations of Interest

3.2 There were none.

3c Exclusion of the Press and Public

3.3 There were no Part Two items.

4 VELVET JACKS LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

4.1 The Panel considered a report of the Executive Director of Neighbourhoods, Communities and Housing in relation to an application for a Variation of a Premises Licence for Velvet Jacks, 50 Norfolk Square, Brighton, BN1 2PA. Present at the hearing were: Jacqueline Perry (Applicant), Eve Pleavin (Applicant's Representative), and Hannah Stapplehurst and Andre Bernascone (Sussex Police). Emma Bullen (Licensing Authority) had made a written representation but was unable to attend the hearing.

Introduction from Licensing Officer

2 The Licensing Officer stated:

“This is an application for a variation to the premises licence for Velvet Jacks, 50 Norfolk Square. The applicant is asking for an extension of their alcohol licence from 11.30pm until midnight but they are reducing their opening hours at the beginning of the day. They also currently do not have recorded music on their licence but deregulation allows recorded music until 11pm. The applicant is asking for recorded music until 11.30pm Tues-Sat.

Two representations were received. They were received from Sussex Police & The Licensing Authority. Representations received had concerns relating to Prevention of Crime and Disorder, Cumulative Impact, Prevention of Public Nuisance & Public Safety.

Our Statement of Licensing Policy states that applications which are likely to add to the existing cumulative impact 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.

Furthermore, 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 in the light of the individual circumstances of the case. If an application is unlikely to add to the Cumulative Impact of the Area, it may be granted. It is up to the applicant to demonstrate exceptional circumstances and satisfy the Panel that they won't impact negatively on the Cumulative Impact Area.

As the panel are aware the adoption of the Matrix approach to licensing decisions found in the statement of licensing policy and this agenda on page 11 includes a table with provisions for a terminal hour for all classes of license premises in a particular area, recognising the diverse operations and different risks presented by those premises.

It is important to note that each application will be given individual consideration on its own merits.”

3 In response to the Panel, the Licensing Officer confirmed that the premises had been licensed as a café-bar for three years and had been a licensed restaurant under a different operator for around 30 years.

Representation from Sussex Police

4 Sussex Police stated that the premises was in the cumulative impact zone (CIZ) as defined in the Council's Statement of Licensing Policy and it was there for incumbent on the applicant to demonstrate that their application was exceptional and would not add to the cumulative impact of alcohol use on the area. The Policy stated that there was a

presumption of refusal for any application to extend the hours of a café-bar. The Applicant had not consulted with the police before submitting their application.

- 5 The Police visited the premises on 25 April 2018 following information that drug dealing was taking place and found multiple breaches of the conditions of the existing licence. The CCTV system's clock was incorrect and footage was only retained for 11 days rather than the 30 days which were required. The incident log had never been signed off by the DPS or someone acting on their behalf, there was no record of staff training and no security risk assessment. Upon examination high levels of cocaine were found in the men's and women's toilets on multiple surfaces and in a downstairs office area. The level found was not generally associated with incidental contamination and was likely caused by direct recent contact with the drug.
- 6 The Police made a follow up visit to the premises on 12 June 2018 and found that the Applicant had made improvements to comply with the conditions of the licence. Installation of a new CCTV system had been arranged which would include an additional camera to cover the downstairs office area. The office door now had a punch lock to prevent customer access. A metal surface had been installed on the backs of the toilets and on the windowsills to make it more difficult to use as a surface for drugs. The Police found that the level of contamination had declined in all the areas tested but still found significant levels on the windowsill in the women's toilets which suggested that despite the new surface people were still using it to take cocaine. Staff presented an updated incident log but not a staff training log or risk assessment. Sussex Police concluded that significant progress had been made but there were still breaches of the existing conditions which had not yet been rectified and there was no evidence that the application had any exceptional circumstances and would not add to the cumulative impact in the area.

Questions to Sussex Police

- 7 The Chair asked if the proximity of the premises to Norfolk Square was of concern to the Police as the area had become a hot spot for street drinking and rough sleepers.
- 8 Andre Bernascone responded that the Police recognised the issues in the area but stated that these were mostly due to street drinking and not related to the premises; the majority of complaints received from residents in the area were to do with noise levels. He also stated that Western Road and Church Road were outside of the centre of town where the Police's focus had to be and thus was not easily covered at busy times.
- 9 In response to Councillor Hyde, Andre Bernascone stated that most pubs and bars in the city would be positive for cocaine but the levels found in the premises were exceptionally high and well above the level at which contamination would become a concern.
- 10 Andre Bernascone responded to Councillor Hyde that the downstairs office area was accessible by customers and that the evidence of probable cocaine use in the office area was not necessarily evidence of staff using drugs.
- 11 Hannah Stapplehurst responded to the Chair that there had been no increase in staff training to comply with the conditions of the licenses as far as the Police had seen.

Representation from the Applicant

- 12 The Applicant stated that the premises was very small and for most of the week she worked the bar alone. She had two members of staff who worked Friday and Saturday; both had worked at the bar for a number of years. The Applicant confirmed the measures she had put in place that the Police had highlighted in their representation. The Applicant stated that she had been a Prison Officer before purchasing the bar and was very vigilant. She had been surprised by the level of cocaine found by the Police.
- 13 The Applicant stated that she felt the bar provided a safe space for gay, straight and trans women and had received a lot of positive reviews which showed that customers felt the same. The bar mostly served cocktails and the price point was such that it did not encourage binge drinking. The bar served pizza from its own kitchen as well as hosting popup kitchens several times a week. The extension to the opening times applied for would allow the bar to serve night caps to people coming back from Brighton and would help the bar remain financially viable with its current menu and clientele.

Questions to the Applicant

- 14 In response to the Chair, the Applicant confirmed that food was available while the bar was open and that there was no vertical drinking in accordance with the premises' café-bar licence.
- 15 The Applicants responded to the Chair that she was seeking to sell the establishment as she wanted to be able to retire. She stated that she was not rushing to sell the bar and was looking to sell it to owners who would continue to run it with the same ethos.
- 16 In response to Councillor Deane, the Applicant stated that she had completed a licensing and health and safety course and had run a bar in London previously. She also stated that her two employees held personal licences.
- 17 In response to Councillor Hyde, the Applicant admitted that she had been a little lax in maintaining the conditions of her license due to the small, quiet nature of the bar. She stated that since the initial Police Licensing visit she had rectified the issues and had put processes in place to ensure that similar lapses did not occur in the future.

Summary

- 18 The Licensing Officer stated:

"This is an application for a variation to the premises licence for Velvet Jacks, 50 Norfolk Square. You have heard from all the parties present.

Licensing Guidance (9.37) states that: In determining the 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 appropriate to promote the licensing objectives;

- the representations (including supporting information) presented by all the parties;
- this Guidance;
- its own statement of licensing policy

The premises falls within our cumulative impact area and this special policy will only be overridden in exceptional circumstances. The effect of this special policy is that applications 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.

The question for the Panel is whether they consider that the application is likely to add to the existing Cumulative impact and/or has the applicant demonstrated that their application will not have a negative impact.”

- 19 Sussex Police stated that they felt the applicants had not sufficiently demonstrated how further licensable activity at the premises would have no cumulative impact on the area or that this was an exceptional application which should be considered outside of the licensing matrix.
- 20 The Applicant stated that Velvet Jack’s provided a valuable local amenity by providing a safe space for women which was not offered at other bars in the area. They were a very small establishment and the clientele they attracted would not place any additional strain on Police resources or harm to neighbours.

Decision

- 4.21 The Panel’s decision was sent to all parties:

“The Panel has considered all the papers and relevant representations and listened to the submissions made today. The application is situated within the cumulative impact zone (CIZ). Our policy states that applications for variations 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 application seeks to extend the hours for sale of alcohol from 11.30pm to midnight, and to add the activity of recorded music to the licence until 11.30pm. Recorded music is now largely deregulated until 11pm. Representations against the application have been made by the police, and licensing authority. The police have concerns about high drug swab readings and various breaches of conditions on the licence in relation to staff training, CCTV and the incident log. They consider that there are a number of existing issues which need to be rectified.

“The applicant points to the women centred, safe character of the bar and the service to the transgender community which she considers makes it an exceptional premises so as to depart from the policy although the premises is up for sale. She acknowledges some of the issues with conditions and drugs and has taken some steps to address these which the police do acknowledge.

“The panel has considered the application within the context of our special policy. The burden is on the applicant to show why and how they will not add to cumulative impact and to address this in their application and operating schedule. The applicant has not specifically mentioned the policy in their application. The panel has taken into account the women and transgender centred nature of the premises and to some extent welcomes this. However we do not consider it is a strong enough reason to constitute exceptional circumstances to depart from policy and in any case there is no guarantee that this characteristic will continue after sale of the premises. The panel do consider that given the nature of the area which suffers from existing issues of anti-social behaviour, crime and disorder, and public nuisance, an extension of sale of alcohol hours until midnight is likely to add to negative cumulative impact and especially as the premises will be operating more as a bar at this time.

“Furthermore the panel shares the police concerns about the issues which have come to light relating to the premises and lacks confidence in the ability of the licence holder to properly adhere to some of the conditions on the licence. We recognise that this is a relatively small premises and that steps have been taken to rectify issues, but consider that more work needs to be done with the police especially in relation to the drugs issues and training to ensure compliance with the licence and to promote the licensing objectives. In our view it is not appropriate to grant the variation requested. The application is therefore refused.”

The meeting concluded at Time Not Specified

Signed

Chairman

Dated this day of