

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

**10.00am 13 JULY 2018**

**HOVE TOWN HALL, ROOM G90 - HOVE TOWN HALL**

**MINUTES**

**Present:** Councillors; Hyde (Chair), Knight and O'Quinn

**Officers:** Mark Savage-Brookes, Licensing Officer; Liz Woodley, Senior Solicitor and Penny Jennings, Democratic Services Officer

**PART ONE**

**5 TO APPOINT A CHAIR FOR THE MEETING**

5.1 Councillor Hyde was appointed Chair for the meeting.

**6 PROCEDURAL BUSINESS**

**6a Declaration of Substitutes**

6.1 There were none.

**6b Declarations of Interest**

6.2 There were none.

**6c Exclusion of the Press and Public**

6.3 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).

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

**7 YUN FENG ORIENTAL FOODSTORE LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)**

- 7.1 The Panel considered a report of the Executive Director, Neighbourhoods, Communities and Housing in respect of an application for a new premises licence received under the Licensing Act 2003 for Yun Feng Oriental Foodstore at 25 London Road, Brighton, BN41, 4JB.
- 7.2 It was noted at the outset that although the applicant had been notified of the timing and date of the meeting he was not in attendance and that notwithstanding early notification of the meeting no representative of the applicant company was in attendance. The Chair, Councillor Hyde considered that the first decision of the Panel needed to be whether to proceed with the hearing in the absence of a representative on behalf of the applicant. It was also noted that on 10 July, the sole director of the company, Gou Zhang, had asked for the hearing to be re-arranged as he was unable to return from China his flight having been cancelled due to a typhoon. The Licensing Officer, Mark Savage-Brookes (MS-B) outlined his contact with the company/Mr Zhang as follows:-

28 June 2018 – email advising the company of the hearing date of 13 July. 04 July 2018 – email to Mr Zhang, attaching the representations, and confirming the date of the hearing. It had also included the following advice:-

“I would strongly advise you to look at our Statement of Licensing Policy and that you consider providing a statement to address the premises’ location within the SSA. It would also benefit you to explain the business and how the sale of alcohol will be operated, the types of alcohol you want to sell, etc. and that you complete the Operating Schedule of your application, providing positive proposals to ensure that your proposed licenced operation will not add to the problems faced in the areas.”

10 July 2018 – email from Mr Zhang seeking an adjournment.

11 July 2018 – email to Mr Zhang inviting him to provide a statement on why the application should be adjourned.

- 7.3 MSB had received no response to his requests for information contained in his emails of 28 June or 11 July. MSB also advised that the premises were currently trading. Panel Members were therefore unclear as to why a representative of the company had not attended the hearing in Mr Zhang’s absence. Additionally, notwithstanding advice given to him Mr Zhang had not provided a statement in support of his application to have the hearing adjourned. Based on their experience as Licensing Councillors, the Panel were also aware of and recognised the difficulties for Democratic Services in arranging Panel meetings. Having considered all the circumstances, the Panel were firmly of the view that it was reasonable for the hearing to proceed in the applicant’s absence. Having reached this decision, the Panel recognised that it was obliged to properly consider the application.
- 7.4 The applicant had described the premises and operation as a “shop located in the main street, where alcohol was sold for customers, and that there was insufficient space for them to consume alcohol on the premises. The premises fell within the Special Stress Area (SSA) which was deemed as an area of special concern in terms of levels of crime, disorder and public nuisance experienced within it. It was proposed that there would be off-sales only Monday –Saturday 11.00 – 20.00; Sunday 11.00 – 19.00 with a seasonal variation from May to October when it was proposed that the shop would be open from 11.00 – 21.00. Details of the representations made had been notified to the applicants

on receipt by the Licensing Authority. Two representations had been received inviting the Panel to consider refusing the application, one from Sussex Police and one from the Licensing Authority relating to the Prevention of Crime and Disorder and the Prevention of Public Nuisance.

- 7.5 The Panel had expressed concern that because of the relatively high levels of crime, disorder and nuisance in the SSA the area was kept under review. The applicant had not referred to the Special Stress Area or the council's Statement of Licensing Policy (SoLP) in their application nor had they pre-consulted with Sussex Police prior to making their submission. The Police did not believe that the applicant had offered any rationale why this new licence application would be an exception to policy or why the SoLP should be departed from. Further, the applicant had not offered any comprehensive enforceable conditions to help mitigate potential risk in a busy central area of the City and when the premises had been visited on several occasions it had been observed that alcohol had been on sale without the necessary licence being in place, which was an offence. Although the premises had been advised that this was the case this had continued. Sussex Police contended that without suitable conditions the carrying on of a licensable activity at these premises would add to the already existing problems in an area already saturated with licensing premises and were of the view that consideration should be given to refusal of the application.
- 7.6 The Senior Licensing Officer, Sarah Cornell, spoke to the representation made on behalf of the Licensing Team, explaining that Officers were concerned that the application did not meet the requirements of the Council's SoLP. Whilst there was not a blanket refusal on alcohol sales, the premises was located in the SSA, where there was a high incidence of crime and for a licence to be granted in that location an applicant was expected to provide supporting information regarding measures they would put into place in order to manage any potential risk which and a case as to why their application warranted a departure from established policy as identified by the Council's matrix model. No proposals had been put forward by the applicant at all, which indicated that they did not understand these requirements, nor had they demonstrated any reason to depart from established policy and Part M of the application form had been left completely blank. The Council's matrix model stated that no new licence applications should be granted in the SSA, an applicant was expected to show how the policy impacted on their application and why they considered it should be an exception to policy, this issue had not been addressed by the applicant at all. The Licensing Team acted as guardians of the Council's SoLP and in that capacity a representation had been made on behalf of the Licensing Authority as it was believed that the application made was contrary to policy and the Panel were therefore invited to refuse the application.

### **Summing up**

- 7.7 The Licensing Officer, Mark Savage-Brookes summarised by stating that the SoLP had been prepared in accordance with the provisions of the Licensing Act 2003 (the Act) and having regard to Guidance issued by the Home Office under Section 182 of the act. The licensing authority was Brighton & Hove City Council. The purpose of this statement is to promote the licensing objectives and set out a general approach to making licensing decisions. The discretion of the licensing authority in relation to applications under the act was only engaged if 'relevant representations' are made by other persons or

responsible authorities. This policy informed the approach to be taken when deciding applications and imposing conditions when relevant representations are received and was also intended as a guide for applicants as to what to include in their applications. Any conditions added to any licence granted were required to be reasonable and enforceable.

### The Panel's Decision

- 7.8 The Panel then made their deliberations and determined the application. The Chair, Councillor Hyde, stated that the Panel had read all the papers including the report and relevant representations and listened to all the submissions made that day. The application was for alcohol off sales between 11.00 and 21.00 every day during May to October inclusive, and between 11.00 and 20.00 on Monday to Saturday and 11.00 and 19.00 on Sundays between November - April inclusive. The premises were within the Special Stress Area (SSA) as defined in the Council's Statement of Licensing Policy. The SSA was an area of concern to the Licensing Authority because of the relatively high levels of crime and disorder and nuisance experienced within it. The decision making Matrix within the policy indicated a 'no' for off-licences within the SSA, unless the applicant could demonstrate exceptional circumstances.
- 7.9 the Panel had heard from the Police that on 16 January 2018 Trading Standards had visited the premises and noted that alcohol was on sale, despite the premises not having a licence authorising the sale of alcohol. Advice had been given that the sale of alcohol without a licence was an offence. Alcohol was still on sale when the Police visited the premises on 19 January and 24 January. The Panel were very concerned that unlicensed activities had continued at the premises despite the advice.
- 7.10 The panel had considered this application on its individual merits and in the context of the Council's policy in terms of the SSA and Matrix. The Panel shared the concerns of those making representations about the location of these premises. There were already a number of off-licences in this location. The application was contrary to the Matrix and the Panel did not consider that departure from the Matrix was appropriate in this case. In their view there were no exceptional circumstances. The Panel believed that prior consultation with the Police was good practice, noting that there had been no consultation with the Police, or any other responsible authority. Leaving the Operating Schedule (part M of the application form) blank demonstrated little or no appreciation of the Licensing Policy or of the problems associated with the SSA. The lack of information about how the off licence was intended to operate made consideration of conditions difficult. The Panel would have welcomed information about the range of alcohol to be sold, the ABV strength of that alcohol and the area of the shop to be given over to the sale of alcohol. The Panel is concerned that a further off-licence in this area was likely to add to problems already faced and undermine the licensing objectives of prevention of crime and disorder and prevention of public nuisance. The application was therefore refused.
- 7.11 **RESOLVED** - That for the reasons set out above the application for a New Premises Licence for Yun Feng Oriental Foodstore, 25 London Road, Brighton BN41 4JB, be refused.

**Note:** The Legal Adviser to the Panel explained that the minutes of the panel would be available on the Council's web-site under the rubric 'Council and Democracy'. The applicant would receive a letter detailing the Panel's decision with details of their appeal rights attached.

The meeting concluded at 11.20am

Signed

Chair

Dated this

day of