

BRIGHTON & HOVE CITY COUNCIL

LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

10.00am 25 FEBRUARY 2019

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

MINUTES

Present: Councillors: O'Quinn, Knight and Morris

Officers: Mark Thorogood (Licensing Officer) Donna Lynsdale (Licensing Authority Officer), Rebecca Sidell (Legal Advisor) and Hannah Staplehurst (Police Licensing Officer) Kat Hoare (Democratic Services Officer)

PART ONE

78a TO APPOINT A CHAIR FOR THE MEETING

78a.1 Councillor O'Quinn was already appointed Chair for the meeting and introduced the panel and all members

PROCEDURAL ITEMS

78b Declaration of Substitutes

78b.1 There were none.

78c Declarations of Interest

78c.1 There were none.

78d Exclusion of the Press and Public

In accordance with Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2003, the Licensing Panel considered whether the public interest in excluding the public and press from all or any part of the hearing outweighed the public interest of the hearing taking place in public.

78d.1 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of Item 79.

79 17 PRESTON ROAD LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS) - RECONVENED

79.1 The Chair re-introduced the Panel reconvened from the original Licensing Panel held on 18th January 2019.

79.2 The Panel considered a report of the Director of Neighbourhoods, Communities and Housing to determine an application for a Variation of a Premises Licence under the Licensing Act 2003 for 17 Preston Road.

Introduction from Licensing Officer

79.3 The Licensing Officer Mark Savage Brooks stated the following:

“This reconvened hearing is for the Panel to hear an application submitted by Mr **Rany Dahwch** for a new Premises Licence to be issued for **17 Preston Road, Brighton**.

The premises is described as a newsagent and off licence shop and the application proposes the sale by retail of alcohol between the hours of 7am to 1am Sunday to Thursday and 7am to 3am on Fridays and Saturdays. All alcohol sold would be for consumption off the premises.

Eight representations remain outstanding from local residents, Sussex Police, The Licensing Authority and Public Health, with relevant concerns raised in relation to the Licensing Objectives of the Prevention of Crime and Disorder, the Prevention of Public Nuisance and the Protection of Children from Harm.

The representation received can be seen in Appendix C of today’s papers, which starts on page 21. The proposed Operating Schedule submitted within the application can be seen on page 17.

I confirm that the premises is not located in either the Cumulative Impact Area or the Special Stress Area.

Since the adjournment of the last hearing on 18th January, I facilitated a meeting on January 23rd between the applicant, Sussex Police and the Licensing Authority. At this meeting conditions were discussed, as requested by Panel Members. We have since received addendum information and documents which have been circulated to all parties – you can see the first of these at Appendix E of today’s papers, starting on page 33. This was submitted by Sussex Police. Sussex Police also submitted further addendum information, which can be seen in the separate addendum papers. One of the residents who made a relevant representation also wrote in to further explain concerns and these were circulated to all parties last week via email.”

Questions to the Licensing Officer

79.4 There were none.

Representations from Responsible Authorities

Police Licensing Officer

79.5 Hannah Staplehurst, Police Licensing Officer stated the following:

“Following this adjournment, Sussex Police have offered a list of conditions to the applicant as requested by yourselves.

A meeting was held with the applicant, the Licensing authority and ourselves to discuss proposed conditions should this licence be granted. We discussed the proposed conditions offered and why they have been offered. The conditions have been established from the discussion at the previous hearing, but also Conditions that Sussex Police would offer to a new off licence and there is 1 condition that was added to the previous licence for 17 Preston Road following a hearing in 2007 when the licence was first granted.

However, I wish to continue to raise my representation against this application.

Sussex Police note that this part of Preston Road is densely residentially populated with the premises in question situated both underneath and opposite to flats and other residential properties therefore another off licence along this stretch of road would not be suitable due to potential nuisance this could cause to residents.

The area suffers from a certain amount of Anti-Social Behaviour and has a number of other restaurants, pubs, café bars and off licences close by all impacting on the locale of which could potentially be added to with an additional premises with off sales.

Specifically, there is a high number of off licenses within the location of which there are 3 directly opposite this premises along Preston Road, this can be seen on the map added to the report under the Addendum.

The reason for this map is to highlight how many off licences there are in this area and in close reach from this premises. These licenced premises all having varying opening and closing hours of which some have until 3am or 5am in the morning.

Section 3.3.2 Note 8 of the statement of licensing policy states on

“In an area where there are already several existing off-licences and where representations are received about negative cumulative impact on the licensing objectives of a further premises, the application may be refused on these grounds”.

The map highlights there are 6 off licence in the locale of 17 Preston Road, 2 along London Road and another 2 along Beaconsfield Road. Of which there are a further 2 off licences along Preston Road just off the scale on this map.

This map also only highlights the premises with off sales, however there are 2 busy pubs in the vicinity and a small number of café bars and restaurants all with an on sales licence.

Sussex Police note the premises may not be in the SSA however it is very close to the border and is in close proximity from the Level and London Road and any alcohol purchased from the premises is very likely to be taken and consumed in the SSA and

possibly into the CIZ increasing the risk of anti-social behaviour in the city where many incidents that arise are alcohol fuelled.

I would also like to add, there is a lot of history involving this premises and as stated previously it is a cause for concern that the applicant did not pre consult with Sussex Police and the very minimal conditions offered on the application form did not give me confidence that this premises would not mitigate any risk of adding to the alcohol fuelled anti-social behaviour in this area or undermine the licensing objectives, Sussex Police request the committee reject this application.

These Chair are the submissions from Sussex Police for your consideration.”

Questions to the Police Licensing Officer

- 79.6 The Chair asked the Police Licensing Officer regarding the Conditions listed on page 33 which stated that the applicant would amend these in the meeting. The Police Licensing Officer replied that the seven hours from: 11 am – 7 pm were added in 2007 by the Licensing Committee. She added that from a Police perspective the anti social behaviour was recalled, but that the applicant had a different perspective on this matter. Another item - Condition 5, had been agreed to be included.
- 79.7 The Chair asked whether the Police still wanted to represent against this application and the Police Licensing Officer replied that the saturation in the surrounding area on Preston Road and London Road continued to be a cause for concern for Sussex Police which included the very busy pub on the corner near the Duke of York’s cinema and also the Komedia which sells alcohol. She added that it was a worrying stretch of area for police which had a rundown feel and where there might also be children or elderly customers as potential customers.
- 79.8 Councillor Morris stated that he was concerned about certain times in the year when large events might take place in the area, such as Brighton Pride. He stated that he was concerned about women lying in the gutter, under the influence of alcohol, during this event, which he had witnessed, personally and asked if the area did appear to encourage vulnerable people in this way. The Police Licensing Officer replied that safety in the city was the main responsibility for Police and that it was an area where vulnerable people were likely to be at risk.

Representation from the Licensing Authority Officer

- 79.9 The Licensing Authority Officer, Donna Lynsdale addressed the Panel and stated the following:

“This premises has had a long history in breaching licence conditions, poor management, failed underage test purchases, non-duty paid (smuggled) alcohol and food safety issues.

The property owner, Kamber Koluman, as well as being a previous PLH has always been involved with the premises. Even when he was running the premises, we had some of the problems mentioned.

He has never taken any responsibility for his tenants, and how they had been running the premises.

After continuous problems with the premises, and numerous visits from Licensing, Trading Standards and Police Licensing the premises licence was revoked by the Panel after a Review submitted by the Police.

This premises alone, has taken up a lot time and resources by all, during the premises trading and leading up to the hearing where the licence was revoked by the Panel.

When the licence was revoked, I believe this sent a very strong statement to other premises that if they behave irresponsibly their licence could be revoked.

In March 2018 another applicant applied for a premises licence (and at their own admission) were allowed to run the premises, without being charged any rent until a new licence had been granted.

The Panel refused this application.

Once again, another applicant has applied for a premise licence. The applicant admitted that he had been approached by the proprietor to apply for the licence, but has not yet signed a lease. He was not aware of any of the previous problems at the premises.

If the licence was to be granted, this would be a Licence that belongs to the Premises and not the person and the proprietor could then let the premises to other tenants with the risk of the above problems starting again.

Currently this premise is closed, and with an alcohol licence would be more viable to the Landlord to rent out.

My colleagues from Police Licensing have submitted a map of how many off-licences are already in the area, 3 directly opposite.

The Licensing team are concerned that granting this premises licence would send out the wrong message to other traders, that following the revocation of the premise licence, another can be applied for and granted relatively quickly.

The Licensing team have further concerns that granting this application would undermine the licensing objectives and I ask the Panel to consider my comments when making their decision, and that the application for a new Premise Licence be refused taking into consideration the premises history and that it is still owned by the same person.”

Questions to the Licensing Authority Officer

- 79.10 The Chair asked whether the Licensing Authority Officer had received any more information on the recent burglary at the premises. The Licensing Authority Officer

replied that the Police had stated that they were still waiting on fingerprint information to be returned.

The Chair asked the Solicitor present if a licence were granted to a premises holder, could it then be passed on to a new proprietor. The Solicitor replied that Section 16 of the law states that if a proprietor wished to continue an existing premises licence, then it would be the licence holder not the freehold owner who would do this. However if a transfer application was made then consent would have to be given by the person transferring the licence and there would be an opportunity for the police to object to this on the grounds of crime and disorder.

The Licensing Authority Officer stated that in the past there had been instances where a new person who is a qualified DPS was transferred onto a licence and thus changed their status to running a premises. The Chair confirmed that that was a worrying trend and that it was important therefore that the conditions in a licence were effective in preventing this from happening.

The Applicant

79.11 The applicant Mr Rany Dach stated that when he spoke to the Police they had agreed on conditions – and that two of the main conditions had been changed. He stated that if there was a condition that would connect to the lease of 15 years, he confirmed that when he had signed the lease for the business, but that not everything had been agreed with the solicitors and that there was a possible option that he could run the shop, without a licence. He also confirmed that there was a possibility that he may not take up the running of the premises at all.

He stated that regarding Condition No. 7 which stated that there should be a minimum of two members of staff during the hours 11 – 7 Monday – Sunday, he confirmed that it was not financially possible for him to employ a second person to do these weekend hours.

He also stated that the condition which stated that between 7am – 10 am all alcohol had to be hidden behind the counter and would therefore involve the cost of putting up shutters, would be too costly for his business. He added that he wanted to run this as a full convenience store with more food and groceries and not like an off-licence.

Questions to the Applicant

79.12 The Chair asked if the Licensing Officer had spoken to the applicant about the shop displays and how the alcohol could be hidden from the public during the specified times. The Licensing Officer replied that it was possible to do this very simply using a flattened cardboard box or a curtain which was sufficient to cover a fridge area and that this did not have to be expensive, and that he had already had a discussion about this issue with the applicant..

79.13 The Chair stated regarding condition 7 - the importance of having a second staff member on the premises was important due to the difficulties encountered in the

surrounding special stress area and the worries the panel had about the possibilities of selling alcohol from 7 am, which had been raised in the previous hearing.

- 79.14 The Chair asked the Police Licensing Officer about the other off licences in the surrounding area which had historic licences, which would not be granted now and whether some of these were also food convenience stores as well as off licences. The Police Licensing Officer confirmed that there were several off licences which were also food stores, citing three examples: no. 12, opposite which was a Polish grocery store, no. 10 – Pearl Food stores and no. 34 – Preston Mini Market .
- 79.15 The Chair also queried the licence of the applicant's current premises the Booze Corner and whether this had inherited an older licence and the applicant confirmed that it did have an older licence. The Chair also asked if the applicant would still go ahead with 17 Preston Road, if he did not get the premises licence. The applicant replied that he did not trust the landlord and that unless there was an agreed contract set up by a solicitor, he did not want to take this on. The Legal Advisor stated that it was not possible to ensure an enforceable condition to prevent a future transfer of the licence by the landlord. The Licensing Authority Officer stated that it might be possible for the Applicant to transfer the licence on to another party within 28 days of selling the property to a new owner. The Police Licensing Officer also confirmed this. The Applicant also stated that the landlord had not informed him about the recent robbery at the premises nor of the fact that the previous licence application had been turned down.
- 79.16 Councillor Knight stated that she was concerned that it was still very important for child protection for the Applicant to install a blind to cover alcohol during the agreed hours and she also queried the stated hours of 10 am – 11 pm and whether the additional hours of 7am – 3am were also still included. The Chair stated that the revised agreement was until 11pm.
- 79.17 Councillor Morris stated that this adjourned panel was covering old ground and that he had hoped that the Applicant would have progressed in his application, but he could not see that any progress had been made and was concerned about the landlord's past record. He also stated that he had previously advised the applicant that he would need to employ two staff members for his own safety in an insecure area, giving the example of the Pride event where alcohol was sold by many premises in the area at times after 11pm outside of agreed licensing hours. He also confirmed that he did not accept that it was costly to install a suitable blind for the premises.

Summaries

- 79.18 Mark Savage Brookes, the Licensing Officer stated the following:

“This hearing is for a New Premises Licence for 17 Preston Road, Brighton, which originally applied for alcohol sales off the premises between the hours of 7am to 1am Sunday to Thursday and 7am to 3am on Fridays and Saturdays. Other hours have been discussed during this hearing process. You have heard from all the parties present and seen all the paperwork.

Licensing Guidance 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;
- the Guidance;
- its own statement of licensing policy

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

After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule.

If the Panel decide to grant the application then any conditions added to the licence to meet the Licensing Objectives should be clear, precise and enforceable. The penalties for breaching conditions are severe, with an unlimited fine and/or 6 months imprisonment, so this is particularly important.

Alternatively, the licensing authority may refuse the application on the grounds that this is appropriate for the promotion of the licensing objectives.”

79.19 Hannah Staplehurst, the Police Licensing Officer stated the following:

“Thank you, Chair. I will keep this brief and just give an outline:

- Sussex Police met with the applicant and Licensing authority to discuss proposed conditions should this application be granted.
- Sussex Police have concerns over the saturation of this location due to the high number of off licences and other licenced premises in the vicinity of this premises.
- Despite the premises not being in the SSA, Sussex Police have concerns any alcohol purchased at this premises will be consumed in the SSA increasing the risk of Anti-Social behaviour in areas around the City such as the Level.
- We therefore invite the committee to consider the position of Sussex Police and make a decision based on the Statement of Licensing Policy and the Licensing objectives.

Sussex Police request the committee reject this application.

Decision:

79.20 **RESOLVED** – The Panel’s decision was as follows:

The panel has read the report of the Executive Director of Neighbourhoods, Communities and Housing. It has also listened carefully to all the points and

submissions made. In reaching its decision, it has had due regard to the Council's Statement of Licensing Policy (SOLP) and section 182 guidance.

The application is for a new premises licence for 17 Preston Road, Brighton, authorising the supply of alcohol off the premises Sunday to Thursday 07:00 to 01:00 and Friday and Saturday 07:00 to 03:00.

Representations were received from Sussex Police, the Licensing Authority, Public Health, and local residents. The representations raised the licensing objectives of the prevention of public nuisance, prevention of crime and disorder, and the protection of children from harm. There were concerns relating to the location of the premises, hours applied for, lack of consultation, inadequate operating schedule, and the history of the premises.

The panel was adjourned on the 18th January in order for the applicant and responsible authorities to discuss potential conditions and further assess the application. The applicant was willing to operate to reduced hours and a suite of conditions. However the concerns of the responsible authorities remained.

The panel has carefully considered this application in light of the concerns raised. The premises has a significant and troubled history of poor management, failed test purchases, breach of conditions, and non-duty paid alcohol, all of which have seriously undermined the licensing objectives resulting in revocation of the licence following review which was upheld on appeal.

The applicant stresses that he is not linked to the previous management and the panel do not believe that he is. There is however a question mark concerning his proposal and intention to carry on licensable activities at the premises given that he has had very limited involvement with the premises to date and has not yet acquired any leasehold interest. The responsible authorities are concerned that the existing owner of the premises who has been the owner throughout the problem period and who did not take responsibility for the actions of his tenants, may be in a position, should a licence be granted, to exert an influence to the detriment of the licensing objectives. The panel have given some weight to these concerns given the history of these premises.

The panel were also concerned that the applicant showed a limited understanding of the application process and the Council's licensing policy. The applicant was willing to accept a number of appropriate conditions to attach to the licence and reduced sale of alcohol to 23:00 hours but he was reluctant to agree a later start time for sale of alcohol which was of some concern to the panel. However, the main issues for the panel centre upon the location of the premises and the likely impact of a further licensed premises on the licensing objectives.

Although the premises are not located in either the Cumulative Impact Zone (CIZ) or the Special Stress Area (SSA), they are on the border of St Peter's and North Laine ward which according to the Public Health Framework for assessing alcohol licensing is ranked either the worst or second worst in the city for 5 of the 6 alcohol associated crime and disorder indices. The premises are very close to the SSA and London Road and the level which are areas of concern for the police especially, and the immediate area has existing issues of anti-social behaviour and crime and disorder which is clear

too from the representations from local residents. The police stress that the location of the premises is also densely residential and so notes 7 and 8 to the matrix approach within the SOLP are relevant. They have submitted a plan which shows the extent to which the immediate area is saturated with licensed premises mainly off-licences and pubs.

The panel believes the concerns raised by the responsible authorities and local residents in relation to this application are extremely valid. A further off licence and in part the re-instatement of a previously troubled licensed premises is likely in our opinion to add to the problems of public nuisance and anti-social behaviour in the area, and thus undermine the licensing objectives. The panel has taken into consideration the conditions and reduced hours which the applicant is willing to agree, but believe in all the circumstances of this application that they would be largely ineffective in preventing further problems should be application be granted in this location. The application is therefore refused.

The meeting concluded at 10.46 am

Signed

Chair

Dated this

day of