



The Brighton Zip

Madeira Drive

Brighton BN2 1EN

SUMMARY OF APPLICANT'S SUBMISSIONS

For Hearing Thursday 2 December 2021

Introduction

1. These written submissions should be read in conjunction with those served prior to the licensing sub-committee hearing to determine the TENs heard on 20 October 2021. They are at **appendix 1**. Defined terms are adopted from those submissions. For the avoidance of doubt, this application for a new premises licence is made on the same terms as the TENs. The application complies with the café definition in the Policy (more of which below), save for slightly later hours are sought. Whilst, if granted, these later hours will not always be traded (being open air the popularity of the Premises is weather dependent) it will provide vital additional income to hopefully ensure the business is viable.

Operation under TENs

2. The three TENs were used and alcohol was sold at the Premises on all six days, namely 23, 24, 30 and 31 October and 6 and 7 November. The Applicant believes that the Premises operated

smoothly on those days with the new table ordering system working well. As far as the Applicant is aware, there were no complaints and Sussex Police did not witness anything of concern on, or immediately next to, the Premises. Nevertheless, the Applicant was anxious to have an independent assessment and instructing solicitors engaged Andrew Bamber (a former senior licensing police officer) to conduct a covert assessment of the Premises and to then check that conditions were being complied with and that all training records, risk assessments, dispersal policies, incident logs, refusal books etc were as they should be. His report is at **appendix 2**.

3. The Applicant submits that Andrew Bamber's findings are important for several reasons, namely:
 - a) They are independent recognition that the new style of operation works well, all conditions are being complied with and all the hard work carried out over the past months by the Applicant has paid off, with best practice being adopted, adequate training in place and excellent record keeping.
 - b) In his view, the breaches of condition last summer were sufficiently minor to be dealt with by way of a warning.
 - c) He considers that there is no evidence that the operation of the Premises has had a negative impact on the licensing objections and the cumulative impact zone.
 - d) On balance, he would not have made a representation objecting to a grant of a new licence.

Policy

4. The Applicant is well aware of the Policy and accepts that TENs and new premises licences are considered differently. The Premises is located within the Cumulative Impact Zone and therefore it is only 'if an application is unlikely to add to the cumulative impact of the area [that] it may be granted'. The Policy outlines a matrix approach which 'provides a framework of what the licensing authority would like to see within its area and gives an indication of the likelihood of success or otherwise to investors and businesses making applications'.

5. This application falls to be considered as a café as conditions have been proffered requiring the sale of alcohol to be by waiter/waitress service and substantial food must be available at all times. Within the Cumulative Impact Area the licensing authority would like to see cafes, albeit with a terminal hour for licensable activities of 10 p.m. whereas 11 p.m. has been applied for. The Policy goes on to say that departures from the matrix policy will be granted in exceptional circumstances. The examples of exceptional circumstances, with why the Applicant believes that these exceptions apply, are as follows:

a) Consultation and Meeting Requirements of Responsible Authorities

The Applicant and its legal advisors have had several conversations and email exchanges with Sussex Police and, thanks to the series of TENs, they are well aware of what is being proposed. As the Licensing Authority were not specifically consulted but, again, they are aware of the background to the Application and their representation is solely on the grounds of the Policy.

b) Appropriate Corporate Social Responsibility Policy & Community Support

The Applicant takes Corporate Social Responsibility very seriously.

Last summer, Lauren Mabbett, the Applicant's Retail Operations and Marketing Manager attended the four-week Green Growth UK course for businesses which included marketing strategies and support on how to operate in a more substantiable manner. Subsequently the Applicant changed all its packaging from polystyrene to majority one use plastic for bagasse and paper. Single use plastics and straws were replaced by biodegradable coffee cups, lids and straws. The need to recycle has also been addressed. Glass recycling is to operate alongside the current cardboard collections. All used printer cartridges and paper are also recycled.

The coffee and beer suppliers were changed in the summer to local producers that have a better understanding on where the ingredients come from and their production. The brands now sold are Redroaster Coffee and Bedlam Brewery Craft Beer Co.

The Applicant's chosen charity is the Chestnut Tree House, an East Sussex children's hospice. Community boxes are on site for patrons to donate money and various events have been held to assist with end-of-life care. Furthermore, the Applicant supports many other great causes with one off tickets for use of the zipwire to raffles or organising a whole experience day for the collective. In 2021 contributions were made to:

- i) Children's Respite Trust Charity Ball
- ii) Mascot (SML College) Fundraiser for autistic and dyslexic individuals
- iii) Marlets Garden Fundraiser
- iv) IAPWA Animal Welfare Event held at the zipwire for Celebrities riding. See images and film on our website
- v) Breast Cancer Awareness Wear It Pink Weekend
- vi) Star Sussex Raise for Refugees
- vii) Clock Tower Sanctuary Youth Homelessness
- viii) RISE Foundation Fundraiser for Freedom from Domestic Abuse
- ix) Roedean School Christmas Fundraiser
- x) Rockinghorse Children's Charity
- xi) Benfield Primary School Raffle Prize
- xii) March of the Mermaids
- xiii) Goldstone School Fundraiser
- xiv) Chailey Heritage Foundation Prize Draw
- xv) Longhill Highschool Fundraiser
- xvi) Worthing Divas
- xvii) I Do Sussex
- xviii) Old Ship Hotel Family Break Days
- xix) Balfour Primary School Fundraiser
- xx) Deaf Children's Society
- xxi) Brighton Young Carers Group
- xxii) RocknRoll Productions
- xxiii) British Airways i360
- xxiv) Downsbrook Raffle

The zipwire caters to all individuals, including operating quieter sessions and exclusive access for those needing more assistance. For example, the Applicant has previously run sessions for the likes of the Deaf Children’s Society and Brighton Young Carers Group which have ‘one on one’ time with instructors who provide a safe and welcoming experience.

c) The Sale of Alcohol is Ancillary to Business Activity

The Applicant has proffered the following condition:

“The licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the complex as a zipwire (incorporating a coffee shop and ice cream parlour).”

When allowed to carry out licensable activities they account for less than 20% of total revenue.

6. The only remaining example exceptional circumstance is a community contribution to offset impact is not relevant here as the operation has been in situ for many years. However, when the zipwire was constructed £10,000 was paid pursuant to a section 106 agreement.

The Representations

7. The Applicant was heartened that all the representations received from local residents and business were in support of the application rather than opposed, which is most unusual. Furthermore, the representation from the Licensing Authority is based on the Policy (which has hopefully been addressed above) and, rather than asking for the application to be refused, has asked for the panel to decide. This leaves the representation of Sussex Police.
8. Given that the concerns raised by Sussex Police largely echo those presented when objecting to the TENs, the licensing subcommittee is asked to read the relevant sections of the written submission made then which are at **appendix 1**. Furthermore, the comments on the minor breaches of condition in the Summer of 2021 have been discussed at length before two licensing sub-committees and in written evidence. Therefore, the Applicant does not indeed

to repeat what has already been said. The Applicant's comments on the other concerns raised are as follows:

a) Departure from Policy

This has been addressed above.

b) Risk of Intoxication

Drunkenness at the Premises has not previously been identified and the Applicant does not accept it will occur if some patrons choose to have a drink without food. Those revellers who can become drunk and disorderly are attracted to busy vertical drinking establishments with regulated entertainment, late hours and a suitable range of shots, alcopops and other drinks designed to get you drunk as quickly and cheaply as possible. So, who comes to the Premises? As Lauren Mabbett explained to Andrew Bamber, users of the zipwire, locals, dog walkers, families, and day trippers - not categories usually associated with intoxication.

c) Police Resources

The relevance of police resources is covered in some detail in Andrew Bamber's report. Nevertheless, given the style of operation, proffered conditions and clientele, the Applicant submits that a grant as sought will not negatively impact on police resources. In any event, the representation states that the services of the beach Patrol are not required until 23:20 at the earliest which is after the Premises will be closed for licensable activities. Prior to last summer Sussex Police had no reason to visit the Premises and the Applicant believes that this will be the case if a new premises licence is granted.

d) Perception that the Premises is not a Café

The Policy prescribes conditions under the heading 'café' to ensure that the any premises does not become a public house. These conditions have been proffered. Furthermore, as the representation correctly states, signage refers to Zip Bar and Kitchen. Food is an essential part of the offer, as are soft drinks, teas and coffees. The Applicant does not accept that having a well-stocked bar is of any relevance. If a café

did not have a stocked bar, it would not require a premises licence and, in any event, the choice is significantly reduced compared to a bar or pub.

9. Given that that the previous premises licence lapsed due to an administrative oversight which has cost the Applicant tens, if not hundreds, of thousands of pounds, the great strides made by the Applicant in terms of operating practices and procedures, the successful series of TENS and the community support, it is disappointed that Sussex Police are still unable to support the application and are maintaining that the application should be refused in its entirety. The Applicant wishes to stress again that it is always willing to discuss matters with Sussex Police and to discuss any suggested amendments to the application they might have.

Conclusion

10. The Applicant desperately hopes that 2 December 2021 will see the end of a nightmare which has endured since the Summer. It has done all it can to prove that it can be a responsible operator and simply asks for an opportunity to ensure that the business can survive. The Application complies with the matrix save for an additional hour throughout the week in the summer and from Thursday to Saturday during the winter. For the reasons cited above, the Applicant considers that this is an exceptional application and, as the Policy maintains, it should be considered on its own merits. As District Judge Anderson said in the much cited *Brewdog Bars Limited v Leeds City Council* case when deliberating the merits of granted a premises licence to the well know Scottish pub co., 'It cannot be the policy of the Cumulative Impact Policy to bring the iron curtain clanging down to allow such clubs to trade while shutting out Brewdog which attracts more discerning customers who do not engage in binge drinking'. The Premises is not in Leeds, but the same logic applies. The Premises attracts a wide ranging, civilised crowd who enjoy food and drink whilst seated and being served at table. This should be encouraged and is in stark contrast to the vertical drinking establishments on the beach whose clientele were the driver behind the cumulative impact policy in the first place.
11. The Licensing Sub-Committee is therefore respectfully asked to grant the application as sought.

NIALL McCANN

Partner, Keystone Law

25 November 2021

7

