

Rother District Council
 DECISION NO: WK202008380

**GENERAL LICENSING PANEL
 DECISION NOTICE**

Date of General Licensing Panel Meeting: 13 November 2020

Remote Meeting

Date of Decision: 13 November 2020

**NAME AND ADDRESS OF
 PREMISES:**

Devonshire Bar and Lounge, Devonshire Square,
 Bexhill-on-Sea, East Sussex, TN40 1AB

NAME(S) OF APPLICANT:

Sussex Police

REASON(S) FOR REPORT:

The report had been made on the grounds of the failure of the Premises Licence Holder to uphold the 'prevention of crime and disorder', 'public safety' and the 'prevention of public nuisance' licensing objectives.

DECISION MADE:

That the Premises Licence be amended by a reduction in hours and the imposition of 11 conditions.

DECISION MADE AND REASONS FOR IT:

Reasons for the Decision

The Panel was asked to consider a Review Application of the Premises Licence held in relation to The Devonshire Bar and Lounge, Devonshire Square, Bexhill. The application was brought by Sussex Police, supported by Rother District Council's Environmental Health Division, together with a number of local residents. The Panel had been provided with a bundle of evidence that included a number of detailed Police statements and information concerning a prolonged history of crime and disorder, involving violence, anti-social behaviour and drug use at the premises. In addition, there was evidence from the Environmental Health Team of noise complaints and related legal action over the last five years arising from amplified music, and anti-social behaviour involving patrons of the premises. There was also evidence of recent COVID-19 breaches and an inadequate risk assessment document submitted in October 2020. There were a number of representations made by Interested Parties within the report about the disturbances they had suffered from patrons of the premises, as detailed in the Police statements. In considering the matter, the Panel also had regard to the Council's Statement of Licensing Policy and the Secretary of State's S.182 Guidance, in particular the chapter on Reviews.

The meeting was held remotely, facilitated by use of MS Teams software. In attendance to support the Members of the Panel there were a number of council officers. Sussex Police, the Applicant for the review, were represented by Counsel, Peter Savill, together with a number of Police personnel. The premises licence holder (PLH) Mr Gino Forte attended with his legal representative and Counsel, James Rankin. Mr Biggs and Mr

Wright represented Environmental Health Services, and the Interested Parties were represented by the Ward Councillor, Councillor Bayliss.

The Chair of the hearing, Councillor Mier, explained the procedure to be followed for the hearing, emphasising that there would be a full opportunity for parties to engage in the discussion led process. The Panel then heard from the Licensing Officer who outlined the report before the Panel, with details of the current premises licence and the complaint history for the premises.

The application for the review had been made by Sussex Police. In their opening submission, Mr Savill explained that the evidence bundle included a full chronology of numerous incidents connected to the premises. These incidents included violence and persistent fighting between customers, often brawling in the adjacent Devonshire Square. Some of the incidents had involved a variety of weapons. There were incidents involving door staff, who subsequently failed to co-operate with Police. The evidence bundle included reports of regular drugs testing within the toilets, which showed persistent high readings identifying drug use within the premises. In summary, the evidence bundle depicted premises whose management had little, if any, regard for the licensing objectives, and a refusal to engage meaningfully with Police to tackle persistent problems. Several attempts had been made to engage with the Designated Premises Supervisor (DPS) to improve the management of the premises, but no recognisable improvements had been made.

Mr Savill advised that the Police had discussed the matter with the PLH and his legal team prior to the hearing, and agreement had been reached on a package of measures designed to improve matters. These included adoption of all the conditions within the report suggested by Sussex Police, and the reduction of some of the late hours. The Police believed that the proposals from the PLH in relation to the new management team he would be introducing, with the adoption of the proposed conditions, would enable Sussex Police to support the continued operation under the PLH's direct control. The DPS and his entire team had been removed from involvement with the property and the lease held by the DPS had been forfeited. New assurances offered by the PLH suggested matters would be improved significantly and that the licensing objectives would be upheld, so that residents would no longer have to suffer the incidents of violence and nuisance they had so far endured. The Police supported the voluntary continued closure of the premises following the review application and stated that their initial request for a period of suspension would not be necessary if the premises remained closed until March 2021, as promised by the PLH.

The Panel then heard from Mr Biggs, Senior Environmental Health Officer in the Pollution Control Team. He stated that in the past there had been involvement with the premises over the nuisance caused by amplified music that escaped the premises and could clearly be heard in neighbouring flats above the premises. A Noise Abatement Notice had been served in May 2016 to stop the noise nuisance. Efforts had been made to install acoustic attenuation measures to control the noise, which together with noise limiting equipment would ensure that nuisance from music would be contained. These measures in recent times had been ignored and more recently, powers under the Community Protection provisions had been served on the DPS to achieve improvements in standards and behaviours. Up until September 2019, complaints to Environmental Health tended to focus on amplified music, but after that time they focused on anti-social behaviour and nuisance from patrons. In summary, Mr Biggs stated he would like to see a condition attached to the licence requiring a detailed Noise Management Plan that included amplified music and the dispersal of customers if the premises wanted to operate after 23.00.

Mr Wright of the Environmental Health, Health and Safety Team then addressed the Panel. He stated that he had requested a Covid Risk Assessment from the DPS on 6 October 2020. He stated that he received a document that was poorly prepared and lacked a specific detail about the premises. It was his opinion that the document had been copied from another premise and bore no resemblance to the Devonshire itself, or any detail of the on-site operation. He stated that he would want to see a new Risk Assessment that was site specific, and that the measures detailed within it would be put into place to ensure Covid security for customers.

Councillor Bayliss, the local Ward Member for the area, then addressed the Panel. She stated that a number of local residents living around the premises had approached her. Complaints about noise, violence and anti-social behaviour were common from the residents in their experiences of the premises. In particular, a young Mother who had a 5-month-old child had approached her; she had been disturbed regularly by the premises, and by the PLH himself who had a habit of sitting stationary in his car revving the engine loudly, which woke her baby. She stated the Mother had approached the PLH directly through social media and the PLH had been dismissive and hostile towards her. Councillor Bayliss stated that, in her opinion and from the experiences of her residents, the PLH was well aware of what the management were doing, as he had been seen there late at night when incidents were happening, and rather than tackling the problem he appeared to accept it. Several other residents she represented also corroborated the Mother's issues about noise, but many were fearful of reprisals if they were to complain. She stated forcefully that she did not accept the agreed hours proposed to the Panel and believed that the premises should close at 23.00 each night. She stated that once they had shown the premises could be managed responsibly under the new proposed conditions, they could then apply for longer hours.

The Panel asked questions of all the parties regarding their submissions to clarify any confusion before they heard from the PLH's legal representative, Mr Rankin.

Mr Rankin stated that the PLH had previously run the premises, without complaint, until January 2016 when Mr Kapllani was installed as the DPS. Up until that point it was stated Mr Forte had turned the Devonshire into a high-end market premises from the robust public house it had been previously. Mr Forte had cleared away the undesirable and problem customers and attracted a new customer base, offering food and drink throughout the day to different age demographics. He stated that the 2.00am closing hour had been granted in 2008, and there had been no complaints about that late closure under Mr Forte's control. Indeed it was evident from the Police statements that issues did not start until the Kapllanis had taken control in January 2016. It was stated that Mr Forte had not been included in recent discussions with the DPS and Police about concerns and had they done so, Mr Forte would have intervened. Mr Rankin stated that was evident from the immediate actions taken by Mr Forte following the review application. The lease for the premises between Mr Forte and Mr Kapllani had been forfeited and Mr Forte had closed the premises until March next year. Mr Rankin gave an undertaking on behalf of his client that the premises would remain closed until March 2021. A new high specification CCTV system was being installed. A new drug policy, dispersal policy and operating policy were to be imposed. Staff training, Challenge 25 and an Identity Scanner would also be implemented. A new security firm would be providing door security. This firm currently provided security at Mr Forte's nightclub in Eastbourne and were highly respected. The premises were being refurbished and it was stated there would be a return to the standards previously enforced by Mr Forte. New staff were being employed, with nobody from the previous regime run by Mr Kapllani being involved.

It was stated Mr Forte would welcome the opportunity to work with the Environmental Health Officers to find a solution, once and for all, to the amplified music problem. It was said there would be no dancefloor and that music would not be played loudly. Mr Rankin stated that Mr Forte would appoint a noise consultant and request they speak to Mr Biggs to resolve the noise issue. He would welcome the opportunity to install a noise-limiting device that would be set and locked to prevent any noise levels exceeding those agreed with officers. He would happily provide the Noise Management Plan and Covid Risk Assessment requested by the Council officers.

In relation to the issues experienced by residents, Mr Rankin stated Mr Forte had not responded to the Mother particularly well, but that social media was not a proper forum for raising complaints. He said he apologised on behalf of Mr Forte for not dealing with that concern better. He stated that during the eight years Mr Forte ran the premises, when he responded to concerns, should re-assure the residents that their more recent experiences in the last five years would not continue. The premises were to be closed for five months and that this break would ensure the message to previous customers would be one of change.

Mr Rankin then made submissions about the need to offer extended hours. He had discussed the position with the Police and had accepted that some reduction in hours would have to be accepted. The suggestion that 01.00 on Friday and Saturdays and 00.00 Sunday to Thursday for the sale of alcohol, packaged together with a condition that prevented entry to the premises after 00.30 on Fridays and Saturdays and 23.30 Sunday to Thursday would prevent migration of problem drinkers from other venues. To support the dispersal policy, it was stated that door staff would remain in post until 30 minutes after closing to ensure people left the area quietly. It was emphasised that all the measures offered together with Mr Forte's personal involvement as the DPS, would ensure the upholding of the licensing objectives and therefore, a drastic reductions in hours was simply not appropriate. Mr Rankin stated there was too much at stake for Mr Forte for there to be any future failings in these new assurances, and the Police had stated already that they would apply for a new review were there to be any further breaches of the licensing objectives. The business was at a point at which future failings leading to a second review could not be defended.

The Panel asked a series of questions at this stage, in particular what Mr Forte knew about the failings at the premises in recent times. To answer this, Mr Rankin invited Mr Forte to speak directly to the Panel. Mr Forte stated when he had control of the premises prior to 2016, he would immediately respond to any issues raised by the Police, local Council or residents. For example, he stated when the Police wanted him to use a specific security firm, he did so, even though he wanted to use an alternative company. When the Police asked him to install an ID Scanner at the door, he did so. When the Council asked him to install sound insulation, he did so. He stated he would never compromise the safety of the people of Bexhill over profit. He stated he needed the extra hours to make the premises financially viable and to make it an asset to the town. He stated he was not aware of the decline in standards in recent times, as the Police had not latterly included him in correspondence. His first understanding of the scale of the issue was on receipt of the review application and at that stage, he had immediately stepped in to sort the problem out, as stated earlier. In addition, on a point of clarification, the Panel asked about the basement area at the premises and whether it was to be used as part of the licensable area. It was clarified by Mr Rankin that this area should be removed from the licence, as it was not be used.

The Panel then invited the parties to make any final submissions. The Police stated the review had been correctly issued and had clearly galvanised Mr Forte into action. They

were content that all the proposed measures would ensure that the licensing objectives would be upheld, but that should there be any failings in that regard, they would not hesitate to apply for a second review.

The Environmental Health Officers both agreed with the Police position and said they would welcome contact from Mr Forte's noise consultant and to seeing a new risk assessment.

Councillor Bayliss urged the Panel to stick to the original Police position on hours, as set out within the report and stated that it would be awful if the premises were to close, as it was a well-loved establishment in the town.

Mr Rankin stated the Panel should not simply look to reducing hours in the face of all the proposals set out by Mr Forte. Furthermore, Mr Forte had stated that if the Police or local Council want something in place, he would meet that request, so there was no reason to reduce hours further than those agreed between the Police and the Responsible Authorities. The last entry condition would prevent the migration of customers to the premises and with Mr Forte as the DPS, the premises could be run successfully.

At the conclusion of the submissions, the parties were invited to leave the meeting to allow the Panel to consider their decision. The Panel were asked to consider whether, on the evidence they had read and heard at the hearing, that they considered the licensing objectives were being undermined and, if so, what appropriate actions should be considered. The Panel was satisfied, on balance, the evidence showed a history of licensing condition breaches that demonstrated that most of the licensing objectives had been undermined for many years. The Panel was satisfied this was attributable to the poor management by the previous DPS, Mr Kapllani and his brother. They were satisfied, on balance, that the DPS had ignored advice from the Police and Council officers that were intended to help the DPS to operate within the scope of the licence and to uphold the licensing objectives. It was overwhelmingly evident the DPS had ignored most, if not all, of that advice. Had Mr Forte not immediately closed the premises and proposed a raft of new conditions, the Panel was in no doubt the licence would have been revoked. However, Mr Forte had stepped into the equation following the service of the review application. The Panel were satisfied, on balance, that the measures now proposed by Mr Forte would mark a huge shift in attitude towards the licensing objectives and importantly, a shift in attitude towards the residents who lived in the immediate vicinity of the premises. Whilst the Panel was unhappy hearing the evidence offered by Councillor Bayliss about the attitude of Mr Forte towards a young mother who had quite reasonably approached him about noise issues, they accepted his apology for the negative language he had used and the dismissive manner in which he ignored her complaint. The Panel was satisfied the incident would act as a reminder that complaints should be treated more sympathetically. That being said, the Panel was satisfied that the package of measures now being proposed for the premises were sufficient to justify the hours agreed between representatives of the Applicant and the PLH. The Police were given the benefit of time to consider the proposals and to evaluate the effectiveness of the proposals to alleviate the on-going breaches. The Panel was, of course, informed by the S.182 Guidance to look to the Police to be the lead advisors on matters related to crime and disorder, and therefore the Panel was satisfied, on balance, to accept the agreed hours together with the other agreed conditions. Those revised hours, together with the re-entry condition, and all the other conditions accepted by the PLH, would ensure that noise from music and anti-social behaviour and outbreaks of violence would be eliminated. The S.182 Guidance, at para 11.20, urges Members to only take appropriate measures to address the concerns raised within the review, and to ensure their response is a proportionate response to the application. The Panel was satisfied, on balance, that their decision represented an

appropriate and proportionate response to the review application and would lead to a more sustainable approach to the upholding of the licensing objectives.

The Panel was satisfied that the review application was the result of the chaotic manner in which the premises had been managed over the last five years, at the hands of Mr Kapllani. They were satisfied it had been justifiably subject to the review application and that it had clearly galvanised Mr Forte into action. The Panel was satisfied however, on balance, that he could have done so earlier had he paid more attention to what was happening at the premises; given it appeared to be common knowledge amongst local people, according to the evidence of Councillor Bayliss. The Panel was reassured that the Police and officers believed the measures offered a template for Mr Forte to make the premises work for the benefit of the town, subject to his direct management control as the future DPS. They were equally re-assured that should Mr Forte fail to honour the assurances he made to the Panel throughout the hearing, that the Police would not hesitate to bring a second review. The Panel was of the opinion that should a second review occur, then the future Panel may well be less likely to be so reassured.

Decision of the Panel

Following the review hearing, the Panel reduced the operating hours at the premises to:

Premises Opening Times:

Friday and Saturday 10.00 – 01.30

Sunday – Thursday 10.00 – 00.30

Retail Sale of Alcohol:

Friday and Saturday 10.00-01.00

Sunday – Thursday 10.00-00.00

Live Music:

Friday, Saturday 23.00-01.00

Sunday 23.00 – 00.00

Playing of Amplified Music:

Friday, Saturday 23.00-01.00

Sunday to Thursday 23.00 – 00.00

Late Night Refreshment:

Friday & Saturday 23.00-01.00

Sunday – Thursday 23.00-00.00

Additional Conditions to be added to the licence

1. The DPS or a Personal Licence Holder will be on the premises, in a working capacity, each day until all members of the public have left the premises and its curtilage.
2. The 'former' DPS Mr Sokol Kapllani and his brother Mr Artur Kapllani will not be permitted on the premises while licensable activity is taking place.
3. CCTV:
 - a. Digital CCTV and appropriate recording equipment to be installed in accordance with Home Office Guidelines relating to UK Police Requirements for Digital CCTV System (current PSDB Publication), operated and maintained throughout

the premises internally and externally to cover all public areas, including the entrance to the premises. The system shall be on and recording at all times the premises, licence is in operation.

- b. The CCTV cameras and recording equipment must be of sufficient quality to work in all lighting levels inside the premises at all times.
- c. CCTV footage will be stored for a minimum of 31 days.
- d. The management will give full and immediate cooperation and technical assistance to the Police in the event that CCTV footage is required for the prevention and detection of suspected or alleged crime.
- e. The CCTV images will record and display dates and times, and these times will be checked regularly to ensure their accuracy.
- f. Subject to GDPR guidance and legislation, the management of the premises will ensure that key staff are fully trained in the operation of the CCTV and will be able to download selected footage onto a disk (or other electronic portable device acceptable to Sussex Police) for the Police without difficulty or delay and without charge to Sussex Police.
- g. Any breakdown or system failure will be notified to the Police immediately and remedied as soon as is practicable.
- h. In the event of the CCTV system hard drive being seized as evidence as part of a criminal investigation by Sussex Police or for any other reason, the premises will be expected to install a replacement hard drive or a temporary replacement drive as soon as practicable.

4. Training/Authorisation:

- a. The Premises Licence Holder shall ensure that all staff members engaged, or to be engaged, in selling alcohol at the premises shall receive the following induction training. This training will take place prior to the selling of such products: *The lawful selling of age restricted products *Refusing the sale of alcohol to a person who is drunk.
- b. All staff must be trained in the drugs prevention policy and being vigilant to drug use within the premises.
- c. Further verbal reinforcement/refresher training covering the above will be carried out thereafter at intervals not to exceed eight weeks, with the date and time of the verbal reinforcement/refresher training documented.
- d. All such training undertaken by staff members shall be fully documented and recorded at the time and signed by both the employee and the DPS. All training records shall be kept on the premises and made available to Sussex Police, officers of the local authority and officers from the Trading Standards team upon request.
- e. A list of staff members who are authorised to sell alcohol on the premises shall be kept. This shall be endorsed by the DPS with the date such authorisation commences.

5. Challenge 25:

- a. The premises will operate an age verification policy set at a minimum of 25 years (e.g. "Challenge 25") whereby any person attempting to buy alcohol who appears to be under the specified age e.g. 25 will be asked for photographic ID to prove their age. The recommended forms of ID that will be accepted are passports, official Photographic Identity Cards issued by EU states bearing a hologram or ultraviolet feature, driving licences with a photograph, photographic military ID or proof of age cards bearing the 'PASS' mark hologram. The list of recommended forms of ID may be amended or revised with the prior written agreement of Sussex Police, the Licensing Authority and Trading Standards without the need to amend the licence or conditions attaching to it.

b. Signage advertising the age verification or 'Challenge 25' policy will be displayed in prominent locations in the premises.

6. Incident/refusal Log:

- a. An incident log will be maintained by the premises showing a detailed note of incidents that occur in the premises, noting the date and time that they occur. The log will be inspected and signed off by the DPS at least once a month.
- b. The logbook should be kept on the premises and be available for inspection at all times the premises are open by authorised officers of the Licensing Authority or the Police. An incident will be defined as being one, which involves an allegation of a criminal offence.
- c. Feedback shall be given to staff to ensure these are used on each occasion that a refusal or incident occurs at the premises.
- d. Any refusals made for alcohol service e.g. underage, will also be recorded (either in electronic or written form) and feedback given to staff as relevant. The log will be kept at the premises for a minimum of 24 months.

7. Drugs Policy

The management and premises will have an absolute zero tolerance policy towards drugs and drug misuse. The premises must have a written Drugs Prevention Policy that includes how staff will be trained, spotting the signs of drug use, the procedures for logging and reporting all suspicions of drug dealing / drug taking at the premises and the procedure for the logging and secure keeping of any drugs found and their handover to the Police.

- a. Any illegal drugs seized will be stored in a secure place such as a safe and periodically the management will request the police to come and remove all drugs for destruction.
- b. Individuals found to have drugs in their possession will be banned from the premises.
- c. The management will permit the Police to use drugs detection process e.g. an ION Track machine or similar device inside the premises to detect the illegal use of drugs and will sign a Police Consent Form.
- d. Any seized drugs will be documented using a clear bagging and numbering system and this documentation will be provided to police when drugs are collected for destruction.
- e. Signage stating that the premises has a zero tolerance towards drugs will be displayed prominently at all entrances to the premises and the entrances to all toilets.
- f. There will be a written Search Policy in place when door supervisors are on duty with the number of searches to be carried out set on a risk assessment basis.

8. There shall be regular (at least once during every hour) patrols of the customer trading areas, smoking area and WCs to ensure that customer behaviour is not in breach of the law or venue policies or harming the licensing objectives. These patrols will be recorded in writing in the incident book. Door supervisors will be instructed to have particular regard to the care of vulnerable persons particularly anyone who appears to be drunk, incapacitated and potentially vulnerable due to excessive alcohol consumption and/or drug misuse. If it is necessary to eject them, they will be peaceably ejected from the premises as long as an on the spot risk assessment is clear that the person will not be vulnerable and at risk when placed outside. If necessary, a taxi will be called and the person escorted to and put into the taxi to be taken home. Door supervisors will be aware of the need to call the emergency services if necessary.

9. SIA registered door staff will be employed by an external company:
- Friday and Saturday nights minimum of two door staff from 19:00hrs and one additional door staff member from 21:00hrs until the premises has closed to the public, licensable activity has ceased and the venue is completely clear of patrons.
 - Christmas Eve, Christmas Day, Boxing Day, New Year's Eve & Day, Good Friday, Easter Saturday, Sunday & Monday and all other bank holidays – three door staff from 19:00 until licensable activity has ceased and the venue is completely clear of patrons.
 - All major sporting and non-sporting events (excluding league and domestic cup fixtures) shown live, day and or night-time. – three door staff until licensable activity has ceased and the venue is completely clear of patrons.
 - The premises shall install a recognised electronic identification scanning system for customers entering the premises. The system shall be operated at all times door staff are on duty and all persons entering the premises will be scanned. The system should have the ability to share alerts with other venues using similar ID scanning equipment, identify the hologram of an ID and read both Passports and ID cards, including PASS cards. The system should be able to conduct tests to determine if a document is genuine or counterfeit. The system must be compliant with the Information Commissioners good practice guidance for ID scanning in clubs and bars.
10. No person may enter the premises after 00.30 Friday and Saturday, and 23.30 Sunday to Thursday, other than staff, who have not already been admitted to the premises that night.
11. Within two months the Premises Licence Holder shall employ the services of a competent acoustic consultant to prepare a noise management plan for the noise generated by all aspects of the day-to-day operation of the premises. The plan shall be submitted for the approval of Rother District Council Environmental Health department. The plan shall include both physical and management control measures to prevent the noise from amplified music and voice, people/customer noise, internal and external plant, glass bottle emptying etc from affecting the occupiers of residential properties in the neighbourhood.

Once approved, all the control measures shall be implemented before the premises reopens for business.

Right of Appeal

Under the provisions of S.181 and schedule 5 of the Licensing Act 2003 there is a right of appeal against the decision of the Licensing Committee if you are aggrieved at the outcome. This right of appeal extends to the Applicant in the case of a refusal or restrictions on the licence, or the imposition of conditions to the licence. The right of appeal also extends to persons who have made representations where the licence has been granted, or that relevant conditions have not been imposed upon the licence. Full details of all the rights of appeal can be found within Schedule 5 of the Act.

Any appeal should be made to the Magistrates' Court, Edward Street, Brighton, within 21 days from the date of notification of the decision. You must contact the Magistrates' Court to establish the formal procedure for the appeal and the fees for doing so.

A written or electronic copy of this Notice will be publicly available to all parties and published on the Council's website.