

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

**10.00am 14 FEBRUARY 2018**

**HOVE TOWN HALL, ROOM G91 - HOVE TOWN HALL**

**MINUTES**

**Present:** Councillor O'Quinn (Chair); Hyde and Simson

**Officers:**

**PART ONE**

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

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

**81 WELCOME & INTRODUCTIONS**

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

**82 PROCEDURAL BUSINESS**

**82a Declaration of Substitutes**

82.1 There were none.

**82b Declarations of Interest**

82.2 There were none.

**82c Exclusion of the Press and Public**

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).

82.3 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of Item 83.

**83 OSETA CAFE LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)**

83.1 The Panel considered a report of the Executive Director of Neighbourhoods, Communities & Housing in relation to an application for a variation of a premises licence under the Licensing Act for Oseta Café, 34 North Road, Brighton. Attending to make representations were: Mark Savage-Brooks, Licensing Officer, Roy Skam and Sandy Crowhurst, North Laine Community Association, Iris Taylor, local resident and Councillor Lizzie Deane, Ward Councillor. The applicant Elina Sellings attended the Panel accompanied by her landlord's son, Peter Beer.

**Introduction from the Licensing Officer**

83.2 The Licensing Officer highlighted the following:

- The application was for a variation of the premises licence to remove condition 15. 'No Beer, lagers or ciders will be sold at the premises'.
- The current licence was set out in Appendix B on pages 17 to 24 of the agenda.
- There were nine relevant representations from local residents, a Resident Association and a local councillor.
- Representations had concerns relating to Prevention of Crime and Disorder, Cumulative Impact, Public Safety, and Prevention of Public Nuisance.
- Sussex Police had agreed proposed conditions with the applicant. These were not attached to the agenda but were minor changes relating to matters such as CCTV, the incident log, training and Challenge 25. These were circulated to the Panel members and all those present at the meeting.
- The premises were situated in the Cumulative Impact Area and cumulative impact was cited as a reason for concern. Applications for variations to premises licences which were likely to add to the existing cumulative impact would be refused following relevant representations. This presumption could be rebutted by the applicant if they could demonstrate that their application will have no negative cumulative impact. The special policy was not absolute. Upon the receipt of a relevant representation, the licensing authority would always consider whether there were exceptional circumstances to justify departing from its special policy in the light of the individual circumstances of the case. If an application was unlikely to add to cumulative impact in the area, it may be granted.
- The Panel would need to look at each case on its merits.

**Questions to the Licensing Officer**

83.3 The Licensing Officer confirmed the following:

- The applicant was requesting the removal of one condition. All other conditions in Appendix A remained the same with the exception of those minor changes requested by Sussex Police.
- Unmixed spirits were spirits in bottles behind the counter. If the spirits were mixed they did not have to be behind the counter.
- The local authority had not received any complaints regarding later hours. However on 20 December 2017 residents had reported that beers

were being sold at the premises. Ms Sellings had submitted a variation application in November 2017 to include the sale of beer, lagers and ciders, but this had mistakenly been rejected by an inexperienced member of staff in the licensing team, who informed her that she already had a licence that allowed this. Ms Sellings was advised in December 2017 by the licensing team to have 'bring your own' as she had booked a pop up restaurant. It was not usual to consult residents on these issues. Since then, people brought their own alcohol instead. It was confirmed that this was legal.

- Condition 15 (No beer, lagers or ciders will be sold at the premises) had been placed on the licence as this had been offered by Ms Selling at a previous panel hearing.
- It was confirmed that a personal licence holder had to be on the premises when sales were made. Ms Sellings could delegate this duty to other members of staff who were personal licence holders.

### Representations

83.4 Roy Skam of the North Laine Community Association addressed the Panel and stated the following:

- The North Laine Community Association had opposed the original application in January 2016 on the grounds of cumulative impact. The Association were also concerned that there was no toilet in the premises.
- The application had been agreed with conditions and it was on the understanding that the premises would serve fine wines only.
- The North Laines had many cafés and café bars which were changing all the time. The applicant had been forced to expand into the evenings and beers had been sold. This was adding to cumulative impact. From Wednesday to Saturday the premises changed to Pakal Taco Bar which sold imported beer. This was in operation well before Christmas.
- Residents from the sheltered accommodation at Alfred Davey Court had witnessed people urinating outside their properties. Mr Skam referred to Ms Colbourne's representation which was set out on page 27 of the agenda.
- A police constable had investigated crimes but was not from the police licensing unit.
- The variation would increase the impact on the cumulative impact area and cause noise and disturbance to nearby residents.

83.5 Iris Taylor addressed the Panel and stated the following:

- Since the premises had been open later, she had noticed a number of people standing outside the premises. More alcohol would increase the risk of walking past drunk men.

83.6 In answer to questions the Mr Skam confirmed the following:

- Ms Colbourne lived on the first floor and had bow windows. She was able to look directly onto the café and had observed people coming from the café and urinating in the area.

- Mr Skam was asked when he had received complaints from residents and if they were documented in any way. Mr Skam explained that it was up to the residents to contact the café.

83.7 Councillor Lizzie Deane addressed the Panel and stated the following:

- It was unusual to have so many residents making representations. All these letters were different which added weight to the complaints. All were saying that there was no WC on the premises. Councillor Deane had had a conversation with Ms Selling who had stated that there was a WC, however it was not sign posted as it was in the kitchen. This could be a problem from an environmental health point of view.
- Councillor Deane wanted to examine what facilities were available. This had a bearing on the application. Facilities were not being used.
- In the evening, there were few other places to use facilities.
- The effects of anti-social behaviour was being felt later in the evening.
- The Pakal Taco Bar was advertised as opening to 10.30pm, but had only been granted hours up to 10.00pm.
- Clarity was required regarding the sale of imported beers.
- Councillor Deane asked why the premises licence holder did not know what was happening on the premises at night.
- Residents who had made representations were all elderly. Until the premises had opened they had not experienced problems to such an extent.
- Café Bars in the North Laine added to cumulative impact.
- Councillor Deane asked for the training element to be examined. People taking on the premises were not aware as they should be regarding the conditions on the licence.

### **Representation from the Applicant**

83.8 Ms Selling addressed the Panel, and made the following points:

- Ms Sellings stressed that she was in full control of what the pop up shops were doing. They were not selling alcohol to 10.30pm. They sold alcohol up to 10.00pm and people could drink until 10.30pm.
- The premises had a five star hygiene rating and there were no health and safety concerns about the toilet in the kitchen.
- The letters of representation were all the same and related to the toilet.
- The objections to the variation to the existing licence were public safety, nuisance, street drinking and crime and disorder with a main concern of Oseta Café not having a toilet facility for customers and customers allegedly using the grounds of the entrance to Bread Street and their garden as a toilet.
- Ms Sellings understood that having a toilet on the premises was not a requirement for a licence. Oseta Café already had a licence and was only applying for a variation of the existing licence.
- The café did have a toilet facility available for customers. Staff had to take customers through the kitchen to access the facilities.
- Further to the receipt of representations, Ms Sellings had taken action to investigate allegations relating to customers using the grounds of the entrance of

Bread Street/garden as a toilet as well as leaving the café, coming into the cul de sac, and shouting, singing, fighting and arguing. These concerns were never mentioned to Ms Sellings or her staff by any of the residents of Bread Street prior to Oseta Café applying for a variation of the licence.

- Concerns regarding the café were never raised with local police officers. Ms Colbourne had raised concerns with the police which were completely unrelated and had not mentioned Oseta Café.
- Ms Sellings lived above the shop and had witnessed residents from nearby Collier House that accommodated drug addicts and alcoholics, shooting up and drug dealing in the area, and homeless people sleeping rough near the bin area. These were unrelated to Oseta Café. The residents in their letters of objection admitted that there were pre-existing noise and anti-social behaviour issues.
- Ms Sellings had approached the manager of the sheltered accommodation and asked to invite Ms Colbourne to contact her directly or visit the café to discuss any concerns. The manager later informed Ms Sellings that she had spoken to Ms Colbourne who advised that she did not have any concerns or issues relating to Oseta Café or its customers.
- Ms Sellings asked the Panel to view the allegations and concerns raised in Ms Colbourne's and other residents of sheltered accommodation as unfounded and without proof.
- Oseta Café was a small premises with only 5 tables/16 covers usually open from 8am to 4pm. Most of the customers were local residents who lived or worked in the area including the residents of Bread Street who frequently had lunch at the café.
- On average the premises sold 3 bottles of wine a month, so alcohol sales were insignificant compared to food sales.
- Occasionally the premises was used for various social gatherings and pop up shops such as the current taco bar and the sushi pop up shop last year.
- In the past two years that Oseta Café had held a licence there were no related concerns or issues regarding these activities nor were there any breach of conditions of the licence or licencing objectives.
- The variation to add beer to the existing licence was mostly for these occasions and reduced the risk of drink related issues as beer had a much lower alcohol volume than wine, spirits or mixers. Customers were coming to the café to have food and not with the purpose of getting drunk.

83.9 In response to questions the following was confirmed by the applicant:

- The pop up restaurant sold alcohol up to 10.00pm. Ms Sellings was on the premises. Most of the customers were over 30. There were no teenagers.
- It was pointed out that there was a condition on the licence that the premises should close at 10.00pm. Ms Sellings replied that she was under the impression that the premises could sell alcohol up to 10.00pm and have a drinking up period afterwards.
- Ms Sellings was asked why she asked to have the condition added to the licence. Ms Sellings explained that she did not need the condition however, sometimes people asked for beer.
- Ms Sellings admitted that there was not a lot of storage. This was not a problem as she did not sell much alcohol.
- The taco bar helped to increase revenue. Competition was fierce and prices were rising.

- Ms Sellings explained that the café originally opened to 7 pm but she found those hours too demanding. The hours had changed to 4.00pm.
- Ms Sellings explained that there was no sign in the premises relating to the toilet as it would point to the kitchen. Customers had to go behind the counter to access the facilities.
- Ms Sellings was asked if the accessors who gave the café a five star rating had been aware that the toilet facilities were in the kitchen. Ms Sellings replied that she could not comment on what the accessors realised.
- Ms Sellings confirmed that customers did ask to use the toilet. They were accompanied to the toilet by staff.
- Ms Sellings confirmed that Oseta Café and the taco bar were mostly food led.
- Ms Sellings confirmed that she leased the premises.
- Ms Sellings confirmed that there were always premises licence holders on the premises.
- Ms Sellings confirmed that Pakel Taco Bar was a temporary pop up shop. Oseta Café supported new businesses until they moved to a more permanent premises or closed down. The taco bar was looking to move to its own premises.
- It was pointed out that the advert for the Pakal Taco Bar referred to the serving of alcohol. The Licensing Officer explained that an inexperienced licensing officer had mistakenly given the wrong advice to Ms Sellings that beers could be sold. She was later informed (on 20 December) that she could not sell beers.
- Ms Sellings was asked why she considered that there was no cumulative impact in the CIA. Ms Sellings explained that she had not seen any negative impact from pop ups.

### Summaries

83.10 The Licensing Officer gave the following summary:

- The application was for a variation to remove one condition. (Condition 15. No beers, lagers or ciders will be sold at the premises).
- The applicant had agreed slightly amended conditions with Sussex Police.
- Licensing guidance stated 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; Licensing Guidance; and the council's own statement of licensing policy.
- Each application should be considered on its own merits.
- The question to consider was whether the applicant had demonstrated no negative cumulative impact or justification to depart from the policy. If the Panel considered that the applicants had demonstrated no negative impact then the application should be granted. If the Panel considered that the applicants had failed to demonstrate no negative impact, then the application should be refused.

83.11 Mr Skam speaking on behalf of the North Laine Community Association gave the following summary:

- The information provided was most confusing and there were many unanswered questions. Mr Skam had never advocated conditions as they were not checked.
- The applicant had not demonstrated that there would be no negative cumulative impact. It was obvious that they would be selling more alcohol in the CIA.
- There were concerns that if the variation was granted it would create a precedent for other cafes to be granted a variation.

83.12 Councillor Deane gave the following summary:

- She would like to know more about the training of staff in the evening.
- If the Panel were minded to grant the variation, she would like to see signs for the WC. She understood that toilet facilities were mandatory for café/restaurants over 10 covers.

83.13 Ms Taylor queried the storage of alcohol. She had seen things being taken to the garage. Ms Sellings explained that the garage belonged to Mr Beer. She and her staff sometimes opened the garage to help Mr Beer get clearance for his car. Mr Beer confirmed that the premises was owned by his mother. The applicant did not have use of the garage. He used the garage and stored items in the downstairs of the premises. The lease to Oseta Café was for 9 years.

83.14 Ms Sellings confirmed that she wanted to sell different alcohol not more alcohol. She had no further comments to make.

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

The Panel has considered all the papers and relevant representations and listened carefully to all 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 remove a condition on the licence that ‘no beers, lagers or ciders will be sold at the premises’. Nine representations were received from local residents, a residents association and local councillor. Many of the representations came from residents at a sheltered housing building close to the premises. They say that they already experience considerable alcohol related anti-social behaviour in the immediate area, though not necessarily directly from these premises, and are concerned that removing this condition would

be likely to increase those incidents. The applicant has agreed some slightly revised conditions with the police and seeks to broaden their alcohol offer.

The Panel has considered the application within the context of our special policy. This premises sits within an extremely challenging part of the CIZ which is saturated with premises licences and where there are many incidents of anti-social behaviour. We do believe that removing the condition and allowing the sale of beers, lagers and ciders is likely to add to existing cumulative impact and in particular increase public nuisance. Especially vulnerable in this respect are the residents of the neighbouring sheltered housing accommodation who have experienced issues of anti-social behaviour and noise nuisance including the congregation of persons outside the premises. The number of concerns raised in relation to the premises has increased since the introduction of the pop-up food businesses at the premises and the sale of beers, lagers and ciders is aimed at facilitating these. The panel noted that the applicant did not appreciate that the hours the premises were open to the public on the licence operated as a condition and should be adhered to.

Overall the panel considers that the removal of the condition is likely to lead to more alcohol being consumed at the premises in an already saturated area and that this will undermine the licensing objectives in particular the prevention of public nuisance. We consider that the applicant has failed to demonstrate that there would be no negative cumulative impact or that there were any exceptional circumstances. The panel therefore refuse this variation application.

The meeting concluded at 12.12pm

Signed

Chairman

Dated this

day of