

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

10.00am 28 MARCH 2018

HOVE TOWN HALL, ROOM G90 - HOVE TOWN HALL

MINUTES

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

Officers: Mark Savage-Brooks (Licensing Officer); Rebecca Sidell (Lawyer) and Caroline De Marco (Democratic Services Officer).

PART ONE

96 TO APPOINT A CHAIR FOR THE MEETING

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

97 WELCOME & INTRODUCTIONS

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

98 PROCEDURAL BUSINESS

98a Declaration of Substitutes

98.1 There were none.

98b Declarations of Interest

98.2 There were none.

98c 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).

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

99 BRITISH AIRWAYS I360 LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

99.1 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 British Airways I360, Kings Road Arches, Brighton. The applicants Steve Bax, Chief Executive, and Courtney Lawrence-Hedges, DPS, British Airways i360 were in attendance. Attending to make representations were: Hannah Staplehurst, and PC Rich Cole, Sussex Police, Debbie Gibson, Local Action Team and Sarah Cornell, Licensing Team.

Introduction from the Licensing Officer

99.2 The Licensing Officer highlighted the following:

- The application was for a variation of a premises licence. The applicants sought to remove conditions 7, 13 and 21 and amend condition 8 as set out on page 3 of the agenda. The amendment to condition 8 would allow on and off sales.
- There were three representations from Sussex Police, the Licensing Team and the Local Action Team. The representations had concerns relating to Prevention of Crime and Disorder, Public Safety, Prevention of Public Nuisance, Protection of Children from Harm and Cumulative Impact.
- The premises were situated in the Cumulative Impact Area. Applications for a variation of a premises licence 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 the circumstances of each case and 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 the cumulative impact of the area, it may be granted.
- Each application would be considered on its own merits. The Panel could depart from policy if it was felt to be justified.
- The Matrix approach for licensing decisions in the Statement of Licensing Policy was set out on page 9 of the agenda.

Questions to the Licensing Officer

99.3 The Licensing Officer confirmed the following:

- There had been a minor variation before. The applicants wanted to remove the amended condition No 7.

Representations

99.4 Hannah Staplehurst addressed the Panel, and spoke to the Sussex Police representation on pages 37 to 39 of the agenda as follows:

- The removal of Condition 21 was of particular concern and could undermine the licensing objectives. Broken glass could be used as a weapon in the pod, and the

applicants had not stated how health and safety measures would be implemented if there was a problem.

- The removal of condition 7 would result in the complex becoming a vertical drinking establishment. Currently the licence restricted drinking to three defined areas that could be managed by security. There were no arrangements in place for the removal of the condition.
- Paragraph 3.1.4 of the Statement of Licensing Policy stated that the special policy would only be overridden in exceptional circumstances. The effect of this special policy was that applications for variations 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 show that their application would have no negative Cumulative Impact.
- The Licensing Matrix stated that no new premises or premises licence variations asking for these licensable activities eg. Late night refreshment and hours would be granted in the CIZ, except in exceptional circumstances.
- Paragraph 14.30 of the Secretary of State's Guidance to the Licensing Act 2003 stated that "The effect of adopting a special policy of this kind is to create a rebuttable presumption that applications for the grant or variation of premises licenses ...which are likely to add to the existing cumulative impact will normally be refused or subject to certain limitations, following relevant representations, unless the applicant can demonstrate in the operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives".
- The I360 was in the CIA, where the licensing decision matrix on page 16-17 of the council's Statement of Licensing Policy indicated a No for new premises applications or premises licence variations asking for "vertical drinking" eg. a pub and for Off Licences which would be the case if Condition 13 was removed and Condition 8 was amended to allow Off sales.
- The applicant had not offered comprehensive reasons for parting from policy and needed to demonstrate why the variation would have no negative cumulative impact.

99.5 In answer to questions the following was confirmed:

- The licensing hours set out on pages 21 and 22 of the agenda had not changed.

99.6 Sarah Cornell, Licensing Officer addressed the Panel and spoke to her representation on pages 35 to 36 of the agenda as follows:

- The application was to remove three conditions and amend one condition.
- The application was contrary to the council's Statement of Licensing Policy in the Cumulative Impact Area, where applications are deemed to be refused unless the applicant could demonstrate no negative cumulative impact.
- The Licensing Officer felt she must ask the Panel to decide the application after hearing the applicant explain why they considered that they would not create any negative impact.

99.7 Ms Gibson-Leigh addressed the Panel and spoke to her representation on page 40 of the agenda as follows:

- The application had been discussed at the last Local Action Team meeting. Residents raised concerns at the West Beach Bar turning into another big beach bar if the conditions were agreed.
- The main concern was that the premises was in the CIA, where there was an understanding that there would not be this type of variation.
- There was concern regarding crime and disorder and the issue of people using glasses instead of plastic receptacles.
- The Local Action Team considered that the application contravened all the objectives of the licensing policy.

99.8 In answer to questions Ms Gibson-Leigh confirmed the following:

- The premises was a large venue. The West Beach Bar and Restaurant was a pleasant restaurant at the moment. If people were to stand in the West Beach Bar it would create a very different type of venue, and would become another big bar and club. There was concern at the levels of noise from people outside on the terraces.
- Ms Gibson-Leigh stated that the Belle Vue Restaurant was the same as the West Beach Bar. The name had changed in 2018.

Representation from the Applicant

99.9 Steve Bax, Chief Executive, and Courtney Lawrence-Hedges, DPS, British Airways i360 addressed the Panel, and made the following points:

- The West Beach Bar would remain a restaurant with 200 covers. If the premises was full, the intention was to allow customers to stand at the bar while waiting to be seated, rather than turn them away. The applicants did not want to add to negative impact.
- The business had been analysed over the last 18 months and feedback had been received from visitors. The variation was a response to what was requested by visitors.
- With regard to the use of glass in the pod, it was stressed that the I360 was currently selling a high quality product in plastic glasses. There had been no anti-social behaviour since the premises opened. The applicants did take their responsibilities seriously and there was a significant security presence on the site. People who had had too much to drink were refused service. There was a huge CCTV system. Challenge 25 was in place and staff were trained every 8 weeks.
- The applicants wanted to improve the visitor experience and were not asking for the whole building to be a vertical drinking bar.
- Currently, visitors were encouraged to finish drinks before they left the pod or were escorted to the West Beach Bar.
- The pod could be brought down in 3 to 4 minutes instead of 7 in case of emergencies.
- The applicants felt that they could observe all the rules and already had a strict way of dealing with people. There was a strong security presence in all of the venue's buildings at all times. People were not allowed in the buildings if they were drunk.
- There was a security process in place before people could go on board the pod. There was only one exit which was manned by security and could be monitored closely. The housekeeping team would pick up glasses.

99.10 In response to questions the following was confirmed by the applicants, along with the Panel Lawyer, Licensing Officer and Police:

- With regard to a question about customer feedback it was explained that there had been a great deal of comment about the plastic glasses on Trip Advisor and Facebook. Customers were charged £10 a glass.
- With regard to the application for off sales, the intention was to sell Nyetimber sparkling wines, Brighton Gin and Harveys' beers.
- It was pointed out that there were now much better quality plastic glasses. The applicants replied that they already used high quality polycarbonate glass; however, it did blemish when washed many times. A new venture was to serve a three course meal on the pod. It would be nice to serve wine in glass.
- The applicants were asked if serving in plastic glasses prevented people from enjoying the experience. They replied in the negative and stating that they were selling a premium product. It did not prevent people buying a drink.
- The applicants stressed that after 6pm there was always a security officer on the pod in addition to CCTV.
- It was pointed out that on the occasions that the pod got stuck it had taken longer than three minutes to bring it down. The applicants replied that technical faults were different. There had not been a technical fault for over 12 months. The speed of the pod could be adjusted up and down and there was an evacuation procedure.
- It was pointed out that if the application was granted people could enter the West Beach building without having the pod experience. This could lead to the building becoming a drinking establishment. The applicants explained that there were spaces at the venue that were not open to the public. The plan was for people exiting the pod to go through one room (the Austin/Constable or Nash rooms). It was not in the business model to become a vertical drinking establishment.
- The intention was to allow up to 30 people to stand at the bar in the restaurant. This would allow people to have somewhere to have a drink while waiting to be seated in the restaurant.
- It was pointed out that if granted there would be nothing to prevent the applicants removing more tables. It was explained that the core business was a restaurant business. The applicants were not trying to turn the restaurant into a high street bar.
- It was pointed out that there was no reference to the CIA in the application and statement. The applicants agreed that this was an error on their part.
- It was confirmed that the seafront terrace area had a capacity for up to 60 people.
- It was stressed that the applicants needed to make a case for exceptional circumstances. The applicants replied that they were offering a high end product attracting families and older people. They occasionally had hen parties as part of a day out, but the security presence on the site was high. There were 15 full time security staff and CCTV cameras. There was security around the building 24 hours a day. This set the venue apart from a bar. The clientele did not come to the venue to get drunk.
- It was pointed out that if there was vertical drinking it would attract a different clientele and it would change the nature of the establishment. Customers would not need to go up in the pod. The applicants stated that they did not want to change the nature of the establishment. They wanted to market the venue as a restaurant.
- The applicants were asked what was the most important part of the application and what was the least important. They replied that the most important part of the

application was glasses to serve wine in the pod and the least important part of the application was vertical drinking.

- The applicants were asked how they would control noise disturbance along the seafront and how could they demonstrate that this would not add to negative cumulative impact. The applicants explained that there had been no complaints since the venue opened 18 months ago. This was due to the applicants being responsible to the people who were dining. When people had too much alcohol they were not served any more.
- It was confirmed that tables and chairs were placed on the patio area. The current condition 13 related to inside and outside areas, where alcohol could be served to people seated at tables. The Licensing Officer confirmed that if condition 13 was removed it would relate to the whole restaurant.
- Ms Cornell suggested that the current condition should remain in place with the addition of having a defined area in the Belle Vue Room for vertical drinking.
- It was confirmed that condition 8 would stay the same with the exception of the addition of off sales. Off sales would be sold in the Nash Room which was the retail area. Off sales were the premium products and would be kept behind the counter. They were being sold as they were relevant to the product tried on the pod. The bottle size would be standard.
- The applicants confirmed that all staff were first aid trained and could deal with any cuts that resulted from broken glass.
- In relation to the removal of condition 7, the applicants confirmed that they escorted people from the pod to the restaurant. Customers could then move to the Nash Room and part of the Constable room where there was retail space. Members of the public could not access the Austin Room from the pod.
- The applicants confirmed that people would not be allowed to stand on the outside terraces. The vertical drinking in the restaurant would be monitored by staff. People would be stopped from going outside with drinks.
- Ms Gibson stressed that the Local Action Team's concern was public nuisance, particularly in relation to the removal of Condition 13. If only a limited number of people were to be allowed to stand in the restaurant and if this was controlled, the LAT would be happy to withdraw their representation.

Summaries

99.11 The Licensing Officer gave the following summary:

- This was a new application to remove conditions 7, 13 and 21 and amend condition 8. Licensing guidance stated that in determining applications 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 and its own statement of licensing policy.
- The Panel were aware of the special policy relating to cumulative impact which could only be overridden in exceptional circumstances.
- The applicants needed to demonstrate that their variation application would lead to no negative impact. If there would be no negative impact the application could be granted. If the applicants failed to demonstrate that there would be no negative

impact the application could be refused. If the applicants were minded to amend the application and conditions there would need to be a conversation between parties.

- At this point the applicants confirmed that drinks in the West Beach Bar were served in glass. People would not be allowed to take drinks outside. People were able to drink alcohol while waiting to board the pod.
- The applicants confirmed that only Brighton Gin and Nyetimber wine would be sold as off sales if the variation was agreed. Harvey's beer would be removed.
- The applicants confirmed that the times for off sales would be the opening times for the shop. This would be 10 to 11am to 9pm at the latest. The closure hour was 5pm at the moment.

99.12 Ms Cornell, Licensing Team, gave the following summary:

- The Licensing Team still wished the Panel to decide if the applicants had met exceptional circumstances.
- The Licensing Team had reservations about removing Condition 7.
- Off sales was against licensing policy and the matrix. However there could be strict conditions in place for the hours of the shop and the sale of the two products.

99.13 Sussex Police gave the following summary:

- The application was in the CIA and fell outside the Matrix.
- The use of glass undermined policing in the CIA.
- The applicant had not consulted with Sussex Police.

99.14 Ms Gibson gave the following summary:

- She would be happy if there was a condition limiting the number of people standing at the bar. This was the LAT's main concern.

99.15 The applicants gave the following summary:

- Since the I360 opened there had been 800,000 visitors. The applicants had run a secure operation for staff and visitors. This would continue if changes were made.
- The variation would enhance the visitor experience and would cover all the licensing objectives.

99.16 **RESOLVED** – The Panel's decision was as follows:

The Panel has read all the papers including the report and relevant representations and listened to all the submissions made today.

This is an application for a variation of a premises licence within the Cumulative Impact Zone (CIZ) and therefore subject to the special policy on cumulative impact as set out in the Statement of Licensing Policy. The application seeks to remove a number of conditions on the current licence. These are primarily to enable drinks to be consumed in glass vessels, to remove the café bar condition from the restaurant and to add off sales in the retail area.

Our policy states that applications for variations which are likely to add to the existing cumulative impact will be refused following relevant representations unless the applicant has demonstrated that their application will have no negative cumulative impact. The special policy will only be overridden in exceptional circumstances.

However, the policy is not absolute. Upon receipt of a relevant representation, the licensing authority will always consider the circumstances of each case and whether there are exceptional circumstances to justify departing from its special policy in the light of the individual circumstances of the case. If an application is unlikely to add to the cumulative impact of an area, it may be granted. The impact can be expected to be different for premises with different styles and characteristics.

Relevant representations were received from the police, licensing authority and local action team. The principal concerns were the proposed use of glass on the premises which the police especially were concerned about and vertical drinking. There were concerns particularly from the resident's representative about the potential for a seafront bar in the restaurant area and thus the potential for public nuisance, and the licensing authority emphasised that the proposals were contrary to the statement of licensing policy and the matrix approach.

The applicants wanted to make these changes in order to enhance the customer experience. They stressed the high standard of staff training and large on-site security team presence. They emphasised the high quality and expensive nature of the alcohol product sold.

The panel considered that the application was not clear in a number of respects and noted there had been no prior consultation with responsible authorities. There was no mention of the special policy for cumulative impact in the application and the panel did not consider that the policy was properly understood by the applicants. For example the policy explicitly states that the fact that a premises is exceptionally well managed would not be considered exceptional in order to depart from the policy. Through questioning and discussion a number of issues were clarified. The panel will thus consider each aspect of the application in turn.

In terms of allowing glass vessels throughout the premises (removal of condition 21), the panel share the police concerns in this respect. We do not believe that the applicants demonstrated that there would be no negative cumulative impact arising from this variation or that there were any exceptional circumstances. On the contrary the panel consider that this variation would undermine the licensing objectives of prevention of crime and disorder and public safety. This aspect is therefore refused.

In relation to off-sales, the panel have heard the applicant's submissions about the high quality product but do not believe that the policy presumption of refusal has been rebutted or that there are exceptional circumstances. Off licence sales are specifically included in our special policy and the matrix, and allowing this variation would mean further off sales of alcohol in an already challenging and saturated area. This aspect is therefore refused.

Regarding the removal of condition 13 relating to the restaurant there were concerns about this namely that it would effectively be turning the area into a large pub in the CIZ and that this would undermine the licensing objectives especially of prevention of public nuisance and crime and disorder. The panel share these concerns and believe removal of this condition would lead to negative cumulative impact and consider that the applicants had not rebutted that presumption. However, it was established in discussion with the applicants that they wished to

have the facility at peak times for customers to have a drink at the bar while waiting to be seated. The panel has therefore decided to vary condition 13 slightly as follows: ***'In the restaurant area alcohol will be served by waiter/waitress service to persons seated at tables. There is substantial food offer available and there will be no vertical drinking save for a maximum of 10 people who will be permitted to stand and drink in the bar area of the restaurant (as shown on the plan) whilst waiting to be seated at a table.'***

It was also established during discussion that the main reason for the proposed removal of condition 7 was to allow customers to take their drinks into the exhibition room which had moved to the Austen room which was currently not covered by the condition. The panel do not consider this change will have any negative impact and therefore amend the condition as follows:

Members of the public will be permitted to take unfinished alcoholic drinks which they have purchased on the pod with them, into the Beach Building (the area into which the Pod descends and lets its passengers off). These persons will be directed into one of the following areas:

- (a) The West Beach Bar & Kitchen Restaurant where there is seating/tables (hatched in blue on the floor plan). (This should read Belle Vue Restaurant)***
 - (b) Into the exhibition room (currently the Austin room) where they can view a free exhibition whilst finishing off their drink (hatched in yellow on the floor plan).***
 - (c) To a specifically cordoned off area in "Constable" room on the western side (which is marked in green on the floor plan) where seats will be provided.***
- No drinks will be permitted to be consumed outside of any of the licensed areas. Persons attending private events in another part of the premises will be permitted to take their drinks with them from the Pod into the Private Event.***

The panel further advise the applicants to submit an updated plan of the premises to reflect the current arrangements.

The meeting concluded at 12.55pm

Signed

Chair

Dated this

day of