

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

10.00am 16 AUGUST 2019

ROOM G70, HOVE TOWN HALL

MINUTES

Present: Councillor ; Fowler, O'Quinn and Simson

Officers: Mark Savage-Brooks (Licensing Officer), Gregory Weaver (Democratic Services Officer)

PART ONE

24 TO APPOINT A CHAIR FOR THE MEETING

24.1 Councillor Jackie O'Quinn was appointed Chair for the meeting.

25 PROCEDURAL BUSINESS

25a Declaration of Substitutes

25.1 There were none.

25b Declarations of Interest

25.2 There were none.

25c 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).

25.1 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of Item 26 onwards.

26 THE CAPTAIN PIG LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

26.1 The Panel considered a report of the Executive Director of Neighbourhoods, Communities & Housing in relation to an application for a Premises Licence under the

Licensing Act for Captain Pig, 10 Church Street, Brighton. Present at the hearing were: Clare Sedgwick, Rob White (DPS), Mark Savage-Brooks (Licensing Officer), Liz Woodley (Lawyer), Roy Skam (North Laine Community Association) and Sandy Crowhurst (North Laine Community Association.)

Introduction from Licensing Officer

26.2 The Licensing Officer addressed the panel and stated the following:

- The application sought the licensable activity of Sale of Alcohol, Off the premises, from 9am to 6:30pm daily, with the same opening hours. The application was for 'a grocery shop to sell small quantities of beers, cider and wines via off sales of alcohol. The alcohol would be kept in a locked cabinet behind the counter and only accessible by members of staff'. This was stated on the 'premises description' section.
- The Licensing Authority received two representations. These were received from a Resident's Association and The Licensing Authority and can be found on pages 21-25 of today's Licensing Panel papers. The representations had concerns relating to the Prevention of Crime and Disorder, the Prevention of Public Nuisance and both mentioned and linked this to cumulative impact.
- Emma Bullen could not be here today but would like her representation found on the pages 24-25 of the agenda to be taken into consideration by the panel.
- Conditions were agreed with Sussex Police Licensing Unit and these could be found at pages at pages 26-28. There was an administrative error on the wording of condition 3a. The reference to the 'club house or patio' should be omitted and the condition should read;
 - 3. (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 (PSDB Publication Number 09/05), operated and maintained throughout the premises internally and externally to cover all public licenced areas including the entrance to the premises. The system would have to be on and recording at all times the premises licence was in operation.
- As a result of these conditions being agreed, Sussex Police did not make a representation against this application. An email was sent explaining why they did not make a representation.
- Church Street fell within the Cumulative Impact Area and the council introduced a special policy to address cumulative impact in March 2008 and following further consultation the cumulative impact area expanded in December 2011. The special policy was set up because the Licensing Authority determined that the concentration of licensed premises and the subsequent numbers of people drawn in to the city centre was causing exceptional problems of Crime and Disorder and Public Nuisance. The special policy would only be overridden in exceptional circumstances.
- New applications that were likely to add to the existing cumulative impact should normally have been refused following relevant representations. This presumption of refusal could be rebutted by the applicant if they could show that their application would have no negative cumulative impact on licensing objectives. 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.

- The special policy was not absolute. Upon 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 could be granted. It was up to the applicant to demonstrate exceptional circumstances and satisfy the Panel that they wouldn't impact negatively on the Cumulative Impact Area.

26.3 The Licensing Officer read out the email provided by Sussex Police:

- This was an application for a new premises licence at 10 Church Street, Brighton. The premises was a grocery shop that wanted to be able to sell beers, ciders and wines. The reasons for us not submitting an objection were:
 - All the alcohol offerings would be kept in a locked cabinet behind the counter and this was a condition on the licence. Limiting risk of shop lifting.
 - They were only trading between 9:00-18:30 so no late-night noise issues.
 - Only speciality brands of beer, lager or cider over 6% ABV could be sold. All other products had to be under 6% ABV. This meant higher strength products would be higher cost so wouldn't attract street drinkers.
 - They had agreed to all our conditions such as Challenge 25, CCTV, BCRP membership and staff training.
- The main crime and ASB issues in the North Laine was evening times – this was a small specialist grocer that closed at 18:30.
- We felt with the operating times, the agreement conditions, limiting what could be sold and steps taken to securely store the products, we had no grounds to object.
- It did go against the Brighton & Hove Statement of Licensing Policy however Sussex Police could not object on those grounds.

Questions to the Licensing Officer

26.4 In response to Councillor O'Quinn, the Licensing Officer confirmed that the shop had already opened.

26.5 In response to Councillor Simson, the Licensing Officer confirmed that if the applicant wanted to sell different alcohol, they would have to apply for a variation of the licence.

Representation from North Laine Community Association

26.6 Sandy Crowhurst addressed the panel and stated the following:

- The main issue was the Cumulative Impact.
- Off sales was a further point of contention, this was further stated as negative on the matrix.
- There were concerns of an already heightened state of local crime and disorder in the ward.
- It was noted that this was a conservation area, most streets were residential however since the 2003 Licensing Act things had changed.

- Problems ran during both the day and evening.
- It was noted that many streets were dominated by licensed premises.
- It was claimed that the interests of residents were being ignored over time.
- It was noted that alcohol was becoming the main point of goods being sold.
- The applicant could not prove that they would have no negative cumulative impact.

26.7 Roy Skam addressed the panel and stated the following:

- It was stated that conditions were seldom policed.
- It was noted that conditions constantly changed and that there was a risk of the applicant resorting to selling cheaper alcohol following low sales of expensive alcohol.

Questions to North Laine Community Association

26.8 In response to Councillor Simson, Ms Crowhurst stated that there was a large series of police incidents in the area including begging, homelessness, county lines issues, drug dealing. It was further stated that the area was also heavily congested that despite everything said, this was still an off licence.

26.9 In response to Councillor Fowler, Ms Crowhurst stated that there were lots of conditions that stopped happy hours drinking and that the higher price of alcohol would not alleviate the issue of people drinking in the area.

26.10 In response to Councillor O'Quinn, the Licensing Officer clarified that there were 1400 licensed premises in Brighton and Hove, of which 76 were in the North Laine.

Representation from Applicant

26.11 Clare Sedgwick addressed the panel and stated the following:

- The applicant knew the market well due to the amount of time practising their dietary lifestyle.
- It was clarified that only 5% of what was being applied for was for alcohol, the rest was for organic fruit and vegetables.
- It was stated that this would be the first vegan grocery shop in the North Laine.
- Sale of alcohol would be focused on locally produced beers, wine and cider.

26.12 Rob White, DPS, addressed the panel and stated the following:

- The applicant was happy to not sell spirits.
- The aim was to help support local businesses.
- It was claimed that having a vegan shop would add to the diversity of the North Laine.
- Offering particular alcoholic goods to customers from small suppliers such as craft/artisan beer at expensive prices wouldn't be purchased by the majority of people.
- It was stated that there would not be a large impact on the CIZ as most products sold were more likely to be consumed at home.
- It was stated that cans would cost around £3 and wines would be around £11.

- It was stated that the petition provided comprised signatures taken in the first 5 days of being open, it was noted that among them some were tourists and many local people.
- It was stated that vegans had deeply held beliefs in regard to the contents of food and drink.
- It was noted that this shop had a clientele of being vegan only.
- It was further noted that the locked cabinet was completely safe.

Questions to the Applicant

26.13 In response to Councillor O'Quinn, the applicant stated the following:

- Only 5% of sales would be alcohol.
- It was stated that not many shops provided much vegan alcohol in the area.
- It was noted that companies they were looking to supply alcohol from were certified and more trustworthy than many mainstream companies. It was clarified that there were some drinks which were fine for vegetarians but not for vegans.
- The panel was provided with images of the interior of the shop space and were given a brief overview of the layout.
- It was noted that the space for selling alcohol was very small and that what was being requested was the maximum available.
- It was confirmed that the applicant had no plans to increase hours of operations in future.

26.14 In response to Councillor Simson, the applicant stated the following:

- All products being sold would be vegan.
- The applicant had no prior experience of running Licensed Premises..
- The applicant gave a brief overview of efforts taken to mitigate abusive behaviour by patrons such as the provision of CCTV, toughened glass and lockable cabinet.

26.15 In response to Roy Skam, the applicant stated the following:

- Infinity Foods was not exclusively vegan.
- It was stated that, to many vegans, the ability to shop in a place where they did not have to check every product would be a large draw.
- It was emphasised that the ethos was to support local businesses and sustainability. It was noted that as a result of this, specific suppliers and breweries would be more expensive and that there would be no motive to provide cheaper products.
- It was clarified that business would come from anywhere that would be down to the free market.

Summaries

26.16 The Licensing Officer addressed the panel and stated the following:

- This was an application for a new Premises Licence for The Captain Pig, 10 Church Street, Brighton. The application sought the licensable activity of Sale of Alcohol Off the premises from 9am to 6:30pm daily with the same opening hours for a grocery

shop to sell small quantities of beers, cider and wines. The alcohol will be kept in a locked cabinet behind the counter and only accessible by members of staff.

- We had heard from the applicant regarding additional conditions to those agreed with Sussex Police and they have confirmed that they did not intend to sell any spirits, all products would be vegan including all alcohol and discussion was around where the storage of alcohol would be, as marked on the submitted plan.
- The two representations remained outstanding and these raised concerns relating to the Prevention of Crime and Disorder, the Prevention of Public Nuisance and cumulative impact. All parties present here today had been heard.
- The premises fell within our cumulative impact area and the special policy would only be overridden in exceptional circumstances. The effect of this special policy was that variation applications which were likely to add to the existing Cumulative Impact, will 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.
- If the panel believed the application would add to the existing Cumulative Impact and the applicant had failed to demonstrate how they would counteract that negative impact then the Panel should consider refusal. If the Panel decided to refuse, it would need to demonstrate that granting would undermine a licensing objective and conditions would be ineffective in preventing problems.
- If it was unlikely to add to the Cumulative Impact or the applicant had demonstrated that it wouldn't impact this then the Panel could consider granting the application and any conditions to meet Licensing Objectives and to control cumulative impact should be clear, precise and enforceable. The penalties for breaching conditions were severe, with an unlimited fine and/or 6 months imprisonment, so this was particularly important.
- 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 had to give appropriate weight to:
 - The steps that were 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 was important to note that each application would be given individual consideration on its own merits.

26.17 Roy Skam addressed the panel and stated the following:

- The main issue was conditions, it was stated that police had not attended the meeting due to a lack of resources as a result conditions were just used as a blanket statement to allay concerns.
- It was emphasised that there were no exceptional circumstances and could set a precedent for many similar applications in future.

26.18 The Applicant addressed the panel and stated the following:

- The applicant stated that they were unique in their veganism and that the shop adhered to deeply held beliefs which promoted the case for exceptional circumstance.
- There were some vegans who were in search of a venue that strictly accommodated their dietary lifestyle thus removing the stress of having to check every product for ingredients.

26.19 **RESOLVED** – that the panel’s decision was as follows:

The panel has read carefully the report of the Executive Director of Neighbourhoods, Communities and Housing together with additional information circulated to all parties in advance of the hearing. We paid particular attention to the written representation from the Licensing Officer for the Licensing Authority as she was unable to attend the hearing. We listened to and considered all the submissions made at the hearing.

The application proposes the sale of alcohol for consumption off the premises between 09.00 and 18.30 hours.

The applicant was represented by Clair Sedgwick and the DPS Rob White. Sandy Crowhurst and Roy Skam represented the North Laine Community Association (NCLA).

This is an application for a new premises licence. The premises are located in the Cumulative Impact Area (CIA). The application is therefore subject to the special policy on cumulative impact as set out in the council’s Statement of Licensing Policy.

The effect of the cumulative impact policy is that applications for new premises licences will normally be refused following relevant representations. The presumption of refusal can be rebutted by the applicant if they can show that their application will have no negative cumulative impact on the licensing objectives. The special policy will only be overridden in exceptional circumstances. However, our policy recognises that different premises may have a different level of impact depending upon their style and characteristics. If an application is unlikely to add to the cumulative impact of an area, it may be granted.

We read in the Licensing Authority’s representation that the application was contrary to policy and may undermine the Prevention of Crime and Disorder and Prevention of Public Nuisance licensing objectives.

The Council’s Statement of Licensing Policy includes a matrix approach for licensing decisions with provisions for a terminal hour for all classes of licensed premises in a particular area. The Matrix Model recognises the diverse operation and different risks presented by different classes of licensed premises. It provides a vision of what the Licensing Authority would like to see within its area and gives an indication of likelihood of success or otherwise. The Matrix Model states that in the CIA no new premises licences for off licences should be granted. However, the policy accepts that each

application still has to be considered on its own individual merits. Departure from the Matrix is only expected in exceptional circumstances.

We were advised that the applicant had agreed conditions with the Police to be attached to the licence should the application be granted. These were set out in Appendix C of the report. We were told that the words “within the clubhouse and patio area” in Condition 3a) had been included in error, and should be ignored. The Police’s reasons for the withdrawal of their objection included:-

- All alcohol offerings will be kept in a locked cabinet behind the counter, limiting the risk of shop lifting
- Trading hours between 09.00 and 18.30 meant that there would be no late night noise
- The cost of higher strength products, such as speciality brands of beer and cider over 6% will not attract street drinkers
- Conditions relating to Challenge 25, CCTV, membership of BCRP and staff training had been agreed.
- The main time for crime and ASB in the North Laine is evenings. The specialist grocery shop is to close by 18.30 at the latest.

We also heard from representatives of the North Laine Community Association. They objected to the application, citing all four licensing objectives. They considered that any further off sales would exacerbate the current problems of noise, anti-social behaviour, vandalism and street drinking experienced in the densely residential area. In their presentation, and in response to questions, they made a number of points:-

- It is well documented that the majority of visits to A & E are alcohol related
- There are 76 licensed premises in the North Laine, many of which have off sales.
- Pre 2005, many streets in the North Laine were residential, quiet and sedate. This is no longer the case.
- The streets are dominated by licensed premises.
- The interests of residents appear to have been forgotten
- Small shops are important to the area. A number of them sell vegan products, including the long established Infinity Foods. The sale of vegan products is not exceptional
- The applicants cannot prove that the application will have no negative cumulative impact
- The suite of conditions proposed by the Police did not affect their view that the application would have a negative cumulative impact. Other premises had comprehensive conditions attached to their licences, but the conditions were flouted and there was no meaningful enforcement.

The applicants presented their application and responded to questions from the Panel and objectors. A number of points were made clarifying the application:-

- The shop is small.
- The shop will only sell vegan products. It will be the first exclusively vegan outlet in the North Laine. The applicants want to be in a position to offer a range of products that vegan customers can safely purchase.
- The premises will only open during day time hours.
- Alcohol will be sold for consumption off the premises only.
- Spirits will not form part of the alcohol offer. Only beer, wine and cider will be sold.
- Sales of alcohol are unlikely to exceed 5% of revenue
- No alcohol will be chilled. Most will therefore not be suitable for immediate consumption.
- A condition limiting the sale of alcohol to vegan only alcohol would be acceptable.
- The high prices attached to vegan products, will not attract street drinkers. For example, the minimum price of a bottle of wine will probably be in excess of £11.

The panel has considered the merits of the application within the context of our special policies. We took note of the Police's reasons for withdrawing their representation and agreed with their assessment that ASB and crime was more prevalent in the North Laine in the evening than in the day. We acknowledged the concerns of the Licensing Authority and the NLCA. However, despite the views to the contrary, we considered that a number of factors combined to make this application exceptional, including the vegan only offer; the limited range of alcohol to be offered; the applicants' ready acceptance of restrictive conditions; the alcohol storage arrangements; limited day time trading hours and the size of the premises. We also considered the possible cumulative impact of granting the application on the area. However during questioning of the applicants we were able to canvass a number of conditions and measures to ensure that the application would be unlikely to have any negative cumulative impact.

Overall the panel consider that granting the application will not add to cumulative impact and accordingly, the application as applied for is granted, subject to the following conditions:--

- i) The Mandatory Conditions
- ii) Conditions agreed with Sussex Police as set out in the agenda, save that Condition 3a) should read Digital CCTV and appropriate recording equipment to be installed in accordance with Home Office Guidelines relating to UK Police Requirements for Digital CCTV System (PSDB Publication Number 09/05), operated and maintained throughout the premises internally and externally to cover all public licenced areas including the entrance to the premises. The system shall be on and recording at all times the premises licence is in operation.

- iii) The following special conditions imposed as a result of the hearing:-
- a) All alcohol for sale must be stored in the “locked display cabinet for alcohol” as marked on the application plan submitted and shown as Appendix B of the report. Products in the cabinet must not be chilled.
 - b) Only vegan alcohol products may be sold.
 - c) Only beer, wine and cider may be sold from the premises. (Police conditions deal with the strength of these products)
 - iv) Conditions consistent with the Operating Schedule to the extent that they have not been superseded by any of the conditions set out above.

The Panel consider that the imposition of conditions is appropriate for the promotion of the licensing objectives.

The meeting concluded at 11:40am.

Signed

Chair

Dated this

day of