

ROCKWATER



Rockwater

Kingsway

Hove

East Sussex

BN3 4FA

SUMMMARY OF APPLICANT'S SUBMISSIONS

For Hearing 5 January 2021

Introduction

1. Rockwater Group Limited (the "Applicant") is a new venture which acquired what was then known as The Venue (formerly the View), Kingsway, Hove, East Sussex BN3 4FA (the "Main Premises") in October 2019. In recent months it has been transformed from what was a semi-derelict former nightclub into, what is hoped will be, Hove's premier café, bar and restaurant venue. At the time of writing finishing touches are being applied and, subject to Covid-19 regulations, the Main Premises is set to open before the end of the year to the delight of thousands of its supporters. Photographs of the Main Premises and indicative food and drink menus are at **annex 1**.
2. Adjacent to the Main Premises, on the seafront, are six small shacks (the "Shacks") (see **annex 2**) which sell hot and cold food, teas, coffees and ice cream with two of them also selling alcoholic drinks. Indicative food and drink menus of the Shacks are at **annex 3**. Customers purchasing food or drink either take it away or sit on a decked terrace (see a picture at **annex 4**).
3. Originally designed to be temporary whist the Main Premises was being constructed, the Shacks have proved to be popular with locals and tourists alike and hence been an invaluable source of revenue given the delays in construction of the Main Premises due to Covid-19 and material shortages. Given their success, the Applicant will operate the Shacks on a permanent basis as

they will appeal to customers fresh off the beach who do not feel comfortable entering the relative formality of the Main Premises.

This Application

4. The use of the Shacks for the sale of alcohol has been permitted by the premises licence but only until 14 December 2020, albeit this permission has been extended by way of Temporary Event Notices until the Licensing Sub-Committee hearing. The premises licence previously permitted the use of the Shacks until 31 October 2020, but this was extended by way of minor variation to coincide with, what was hoped to be, the opening of the Main Premises.
5. Therefore, the application simply asks to make, what was a temporary permission, permanent, albeit with a terminal hour of 10 p.m. Please note that no application has been made to amend the use of the Main Premises, simply the Shacks.

Representations

6. The Applicant was pleased, but not surprised, that there were **no objecting representations from any of the statutory authorities**. However, objecting representations have been received from local residents and the Walsingham Road Residents Association (“WRRR”), with a positive representation from Councillor Carmen Appich.
7. The issues raised, together with the Applicant’s comments, are as follows:
 - a) Comments on the Main Premises

The Applicant was heartened to read so many positive comments in respect of development of the Main Premises itself. Indeed, the scheme is overwhelming popular and has backing from residents throughout Brighton & Hove. However, as this application only concerns use of the Shacks, the Applicant is not proposing to comment further on these, or address comments made in respect of the igloos or any part of the Main Premises which are not relevant to this application.

However, where the Main Premises is relevant is in relation to licence conditions. Whilst the operation of the Shacks is a relatively low-key and simple affair, sale of alcohol from them is governed by conditions which were in place to cover what was previously a nightclub with a 5 a.m. terminal hour. Hence 19 conditions apply including the likes of:

- i. Any off sale of alcohol sold in an open container for consumption off the premises must not be served in a glass vessel. 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 areas, including the entrance to the premises. The system shall be on and recording at all times when the premises licence is in operation. The CCTV cameras and recording equipment must be of sufficient quality to work in all lighting levels inside the premises at all times. CCTV footage will be stored for a minimum of 31 days. 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. The CCTV images will record and display dates and times, and these times will be checked regularly to ensure their accuracy. 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. Any breakdown or system failure will be notified to the police immediately & remedied as soon as practicable. 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.

- ii. An incident log will be maintained by the premises showing a detailed note of incidents that occur in the premises. The log will be inspected and signed off by the DPS (or a person with delegated authority) at least once a week. The log book 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. 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 for a minimum of twenty four (24) months.

- iii. SIA licensed door supervisors shall be employed on any other occasions when a requirement is identified by the licence holder's written risk assessment or requested by Sussex Police in writing at least 48 hours in advance. The written risk assessment will be reviewed at least once every calendar year. The written risk assessment will take into account information or guidance offered by the police, and also taking into account busy periods such as Bank Holidays, Season Variations and other City Centre Events e.g. Pride. The written risk assessment will be available on the premises for inspection by police and authorised officers of the Licensing Authority.
- iv. A documented risk assessment must be written by the Designated Premises Supervisor and agreed by Sussex Police, which identifies the activities undertaken at the premises and the controls necessary to promote the licensing objectives. It will include a written assessment demonstrating what considerations have been made for both normal day to day activities and any special events or functions which may arise during the year. This document shall be immediately available for inspection by the Police and the Licensing Authority, upon request.
- v. A written crowd management procedure/dispersal policy shall be designed and implemented to ensure that there is a wind down period prior to the premises closure and customers are advised accordingly. It will be shared with Sussex Police.
- vi. The premises will become a member of the Business Crime Reduction Partnership or similar scheme approved by the Licensing Authority. The scheme must operate, subject to local coverage, radios and additionally an exclusion/banning scheme of named individuals within both the day and night time economy.
- vii. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.
- viii. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.

- ix. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.
- x. The premises will operate a "Challenge 25" policy whereby any person attempting to buy alcohol who appears to be under 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.
- xi. Signage advertising the "Challenge 25" policy will be displayed in prominent locations in the premises.
- xii. 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; and
 - refusing the sale of alcohol for consumption off the premises to people who may have alcohol dependency issues. Further verbal reinforcement/refresher training covering the above will be carried out thereafter at intervals not to exceed 8 weeks, with the date and time of the verbal reinforcement/refresher training documented. All such training undertaken by staff members shall be fully documented and recorded. All training records shall be made available to Sussex Police, officers of the local authority and officers from the Trading Standards team upon request.

b) Proximity of the Shacks to Walsingham Road

All the representations, bar one, have been made from residents living on Walsingham Road. They cite the proximity of the Shacks to their homes (with distances of 50 and 100 metres being referenced) when raising the issue of public nuisance. However, these distances should be put into context. The Shacks are located on the seafront itself facing out to sea. In between the Shacks and any residential addresses is approximately 50 metres of green space and a four-lane busy road with an additional parking spaces on each side. Not only does this create a noise barrier so that activity on the beach cannot be heard, but also a considerable physical barrier to customers leaving the area. Walsingham Road is not a main cut through to access public transport and, unless patrons live on Walsingham Road or on nearby roads to the North, there is no reason to walk down it. It should be noted that there are no representations from those living on Kingsway, nor Sackville Gardens and only one from a resident of Carlisle Road, all of which are a similar distance from the Shacks.

c) Large crowds, Drunkenness and Unruly behaviour

The beach adjacent to the Shacks has always been busy throughout the year. For example, please see at **annex 5** a picture taken on Christmas Day last year. However, 2020 has been an exceptional year. Tired of the lockdown and grateful for good weather, people flocked to the coast and green spaces across the country. Brighton & Hove's beach was no exception and, regrettably, some people drank too much and caused a nuisance. However, the Applicant does not accept that the Shacks either caused, or exacerbated, such behaviour. Those frequenting the beach (which runs for miles) were seen carrying alcohol either brought from home or purchased in any number of supermarkets or off-licences in Brighton & Hove. Yes, those on the beach could purchase alcohol from the Shacks (at significantly higher prices per unit than any off-licence) but this was only part of an offer which included hot and cold food, soft drinks and ice cream. Furthermore, the Shacks had their own temporary toilets and are located adjacent to permanent public toilets, thus avoiding patrons of the Shacks going to the toilet either on the beach or nearby streets – a common problem in other parts of Hove.

No evidence has been presented linking allocations of public nuisance or crime and disorder to the Shacks. The Shacks have been the victim of mistaken identity over the Summer as noise from the bowls club brought complaints. Furthermore, the references to an article in the Argus newspaper stating the applicant was 'overwhelmed' by the numbers on the beach

in late November should be put into context. What was meant by this comment was that the numbers of people on the beach was very surprising, not that the Shacks were causing public nuisance or crime and disorder. For the record, the Applicant had door supervisors to ensure that beachgoers did not congregate near the Shacks and service was suspended for a time to ensure good order. As an abundance of caution, additional door supervisors were employed during the following two weekends despite inclement weather.

If allowing the Shacks to sell alcohol on a permanent basis was a genuine concern there would be representations from the 'independent experts', namely the police, environmental health and the licensing authority itself. There are not. Yet, in order to be a 'good neighbour' and to allay fears, the Applicant is happy to proffer the following condition:

“On any days the Shacks have been used, a door supervisor will be employed from at least 10 p.m. to 7 a.m. the following morning to assist with dispersal and to patrol the immediate vicinity of the premises”.

d) Breaches of Covid-19 Regulations

The Applicant strongly rejects any accusations that it has breached Covid-19 Regulations. It has robust measures in place which have been considered by the statutory authorities. It can only be responsible for patrons on the decking and adjacent to the Shacks. Regrettable though it is, the concerns raised of large groups congregating on the beach are not unique to Hove. At business times, the Shacks have security which at least ensures that social distancing is maintained in the immediate vicinity of the Shacks. In any event, we all hope that when people flock to the beach in large numbers again Covid-19 will on the wane as the vaccination programme bears fruit.

e) The Shacks no longer being needed once the Main Premises opens

Whilst need or demand are not relevant when determining a licensing application, once the Main Premises opens, as cited above, the Applicant considers that patrons will still want to

purchase alcohol from the Shacks for either takeaway or consumption on the decked area, especially if they are in beachwear. Nevertheless, once the hospitality industry is hopefully back to normal at some point next year, demand on the Shacks will decrease significantly.

f) Blocking of footpaths

Due to Covid-19 restrictions coastal footpaths across the county have been busy. Any customers waiting to be served at the Shacks join a socially distanced and supervised queue. The recent removal of storage boxes and a fence has also removed any fear of bottlenecks forming.

g) Consultation

As explained by Councillor Carmen Appich, the Applicant has engaged with local residents and the WRRRA repeatedly since acquiring the Main Premises. Furthermore, the Applicant was aware that residents of Walsingham Road were made aware of the variation application by officers of Brighton & Hove City Council (the "Council") in good time during the consultation period. This is, of course, in addition to following the standard advertising requirements prescribed by regulation.

Nevertheless, the Applicant is happy to have further discussions with either the legal representative of WRRRA, Mr Ewen Macgregor, representatives of WRRRA or any local resident. However, given the cold weather and the need for social distancing, the Applicant suggests that this is either done via email, telephone or by using one of the many video call platforms. If this is of interest, please can they contact the writer, Niall McCann, at niall.m@joelsonlaw.com.

h) Parking

The Applicant is aware that, when the beach is busy illegal parking is a nuisance. However, this has been an historic issue and one which is covered by other legislation.

Licensing Policy of the Council (the "Policy")

8. Before lodging the applicant, the Policy was closely considered. Crucially, the Shacks are not located in a Special Policy Area, hence there is not rebuttable presumption that the application should be refused. Furthermore, the Policy states that the Council 'supports entrepreneurial activity', which this is and the Applicant adheres to the Council's stated policies.

Conclusion

9. The Applicant has invested heavily in both the Main Premises and the Shacks during what has been a very difficult time for the hospitality industry. Whilst a relevant argument Pre-Covid, the consideration of economic factors is now even more important. The Applicant wishes to remind the licensing sub-committee of the case of *R (o/a/o Hope and Glory Public House Ltd) v City of Westminster Magistrates' Court and Others* [2011] EWCA Civ 31, and the observation of Toulson LJ that:

*"Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, **the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand**, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on."*

10. Nevertheless, the Applicant is acutely conscious that financial imperative means nothing unless the licensing objectives can be upheld. Given the incredibly onerous conditions already on the premises licence, the additional condition proffered and the strong management team in place, the Applicant submits that this will be case if the application is granted.
11. The licensing sub-committee is respectfully invited to grant this application.

NIALL McCANN

Consultant Solicitor, Joelson

21 December 2020

