

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

10.00am 31 AUGUST 2012

COMMITTEE ROOM 1, BRIGHTON TOWN HALL

MINUTES

Present: Councillor Hawtree (Chair); Hyde and Marsh

Officers: Jim Whitelegg, Licensing Manager, Rebecca Sidell, Lawyer and Caroline De Marco, Democratic Services Officer.

PART ONE

31. TO APPOINT A CHAIR FOR THE MEETING

31.1 Councillor Hawtree was appointed Chair for the meeting.

32. PROCEDURAL BUSINESS

32a Declaration of Substitutes

32.1 There were none.

32b Declarations of Interest

32.2 There were none.

32c Exclusion of the Press and Public

32.3 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).

32.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of the item on the agenda.

33. GEORGE IV HOTEL - APPLICATION FOR A PREMISES LICENCE

33.1 The Panel considered a report of the Head of Regulatory Services regarding an application for a premises licence under the Licensing Act 2003 for George IV Hotel, 34 Regency Square, Brighton.

33.2 The applicant, Mr Justin Salisbury, attended the meeting with his representative Mr John Newcombe to speak in favour of the application. Mr Roger Hinton and Mr Nigel Rose attended to make representations against the application.

33.3 The Licensing Officer summarised the application. He explained that the applicant no longer requested the provision of late night refreshment for members of the public (there was an exemption for late night guests). Three representations had been received from local residents and a residents' association on grounds of Prevention of Public Nuisance. A representation from Sussex Police had been withdrawn as the applicant had agreed to a reduction in the hours and for conditions to be attached to the licence. The premises was in the Cumulative Impact Area where applications would normally be refused. This presumption could be rebutted if it could be demonstrated that there was no negative cumulative impact.

33.4 The Licensing Officer drew attention to the Matrix at 2.71 of the Statement of Licensing Policy. This should be considered but each case should be considered on its individual merits. He confirmed that the premises did not currently have a licence.

33.5 The Panel Lawyer asked if extension of hours for bank holidays was still in the application. The applicant confirmed that the hours would always be 10.00 to 23.00 hours.

33.6 Councillor Marsh asked about the position after public closing time. The Licensing Manager explained that the same principles applied as to the public opening hours.

33.7 The Chair asked what constituted a bona fide guest. The Licensing Manager replied that this was not defined. It would be a matter to investigate at the time by checking with the hotel and accessing hotel accounts.

33.8 Mr Rose stated that he thought the application should show how many people should be allowed to congregate on the steps outside. The Licensing Manager explained that this matter would not form part of the licensing process. The applicant stated that he had agreed with the police that no people would drink outside.

33.9 Mr Rose asked why there was no mention of the yard in the application. The applicant confirmed that the yard was not in his ownership.

33.10 Mr Hinton presented his representation as set out in his letter of 18th July 2012. He explained that he lived in Regency Square. Mr Hinton stated that all of the premises in Regency Square except two, were residential properties or hotels. None had an alcohol licence to his knowledge. Mr Hinton stressed that if the application was granted it would create a precedent and other hotels would want to follow. This would change the character of the square.

33.11 Mr Hinton noted that the applicant had said that he did not want stag or hen parties. He stated that a licence would not be restricted to talented or educated people. He stressed that business conditions changed and that even well run premises could cause problems. Mr Hinton quoted the planning inspector in a recent planning case relating to Hampton Place (page 25 of the agenda). The inspector had upheld the refusal of a late night café opening hours on the grounds of likely noise and disturbance. Mr Hinton felt that the same principles applied to this application. Residents' bedrooms were feet away from the premises.

33.12 Mr Hinton informed the Panel that there were other opportunities nearby for refreshment. There was no need for a public bar in Regency Square. Mr Hinton asked the Panel to refuse the application in order to protect Regency Square, and ensure residents could have a good nights sleep.

33.13 Mr Rose presented his representation on behalf of the Regency Square Area Society as set out in his letter of 30th July 2012. He stated that he supported everything said by Mr Hinton. There were 13 hotels in Regency Square and if one was granted a licence to operate as a pub it would set a dangerous precedent for others to do likewise and change the nature of the square. There were already three pubs within 300 metres and one bar within 100 metres.

33.14 Mr Rose stated that the premises had a reception that could hold between 30 and 40 people. He asked what would prevent guests from inviting people to the premises until 05.00 hours. The premises was in close proximity to people sleeping. People could congregate on the steps of the George IV Hotel.

33.15 Mr Rose expressed his concern about smokers. Smokers could congregate in the yard at the back. Noise at the back of the house funnelled upwards and affected the bedrooms at the back of properties creating a public nuisance. People could congregate outside until 05.00 hours. Mr Rose objected to the application.

33.16 Councillor Hyde asked if any other hotels in the square served alcohol. Mr Rose stated that there were some that did serve alcohol. He was not sure if this was extended to 05.00 hours for residents and guests.

33.17 Councillor Marsh asked Mr Rose whether the premises currently caused problems. Mr Rose replied that there were no problems at the moment.

33.18 Mr Newcombe reported that there were seven licensed premises in Regency Square. Five had 24 hour licences. There had been one recorded crime in June. Bearing that in mind, he asked Mr Rose to acknowledge that there would not be massive problems when other premises already had licences.

33.19 Mr Rose stated that he was aware that there were licenses to enable premises to be public houses up to 23.00 hours.

33.20 Mr Newcombe asked if Mr Hinton and Mr Rose were aware of any problems in the square. Mr Hinton stated that people passed through the square. Passing noise was not a problem. Persistent noise would be a problem. He asked if the licenses of

existing hotels were for members of the public or for their guests. The public could cause a noise on the entrance steps.

- 33.21 The applicant stated that he was 99% sure that the Beach Hotel had a licence to supply alcohol to the public. Mr Newcombe stated that the premises did not allow drinkers outside and would limit the number of smokers if the Panel was happy to approve numbers. He was happy not to use the back Yard area.
- 33.22 Mr Newcombe set out the case for the applicant. He stressed that it was a modest application to enable the premises to act as a public house. The premises was a small hotel with 8 bedrooms. Mr Newcombe explained that bona fide guests could be invited to the hotel by paid guests. They would not be people off the streets. The applicant wanted to allow a mini bar in rooms. The intention was not to open as a pub, but to allow the manager to enable people staying in the hotel to invite visiting guests.
- 33.23 Mr Salisbury stressed that he was very aware of noise himself and would not encourage anyone to congregate on the steps. It was his intention to allow people to have a good nights sleep.
- 33.24 Councillor Hyde asked for details of the size of the room where the alcohol would be served. The applicant stated that it would be 12ft by 12ft.
- 33.25 Councillor Marsh referred to the plans in the agenda and asked for details about the basement. The applicant stated that it was a very old plan and there was now an office and a staff bedroom in the basement. There were 8 double bedrooms for guests.
- 33.26 Councillor Marsh asked about capacity numbers. The applicant confirmed that numbers had not yet agreed with the fire and rescue service. If the application was granted a fire safety risk assessment would have to be carried out.
- 33.27 Mr Rose asked why the applicant did not make the bar for residents and their guests when it was stated that they did not want to attract people from the street. The applicant replied that in order to restrict the bar to residents and guests they would have to interview people to establish that they were bona fide guests. He did not want to go down that route.
- 33.28 Councillor Marsh noted that there would be mini bars in rooms and asked if there would be sound proofing. The applicant replied that there were solid walls between the buildings.
- 33.29 The Licensing Manager was able to report at this point that the Beach Hotel and the majority of hotels did have licences to sell alcohol. The majority had conditions in place stating that the persons using the bar should be private friends of the residents.
- 33.30 The Licensing Manager set out his closing observations. He summarised the application and stated that the provision of late night refreshment had been removed. The application was in the CIA but this could be rebutted in exceptional circumstances. The Panel needed to establish whether the applicant had demonstrated that the

application would not have a negative impact. If so, the application could be granted. Any conditions imposed needed to be clear and enforceable. If there were no exceptional circumstances the Panel should consider refusing the application. They would need to demonstrate that granting the licence would have a negative impact.

- 33.31 Mr Hinton set out his closing observations. He was concerned that the application would create a public bar in an area where there were no other public bars. It would set a precedent for other hotels in the square. They could have a 24 hour licence for residents and guests.
- 33.32 Mr Rose set out his closing observations. He concurred with Mr Hinton. Mr Rose agreed granting the application would set a precedent. It was not in keeping with the area. He was concerned about people congregating on the steps of the hotel.
- 33.33 Mr Newcombe set out his closing observations. The main issue was access to the public. There were currently no problems in the square. There were 732 crimes in June in the CIA. There was only 1 crime in Regency Square. When the application was lodged, the applicant agreed with the conditions requested by the police and he was prepared to accept further conditions. Mr Newcombe quoted Section 102 of the Licensing Guidance, paragraphs 13.29, 13.33, and 13.34. Mr Newcombe also quoted paragraph 2.69 of the council's Statement of Licensing Policy.
- 33.34 The Panel Lawyer stressed that any conditions imposed should be canvassed with all parties.
- 33.35 At this point the Panel established that the applicants had agreed that they would accept a condition restricting use of the back yard and front steps.
- 33.36 **RESOLVED** – The Panel carefully considered the application and all the submissions made, along with the written report. The Panel also considered the detail of the Council's Cumulative Impact Policy.

The Panel decided to grant this application as the applicant had demonstrated to their satisfaction that, in granting the application, it would not have a negative cumulative impact. The Panel considered that the style & characteristics of a small hotel with a small bar area, open until 11.00pm was unlikely to cause impact or public nuisance. Furthermore, the conditions from the operating schedule and those agreed with Sussex Police supported this.

The Panel did, however, make a slight amendment to the conditions, to forbid consumption of drinks at the rear of the premises. The condition is as follows:

Patrons and their guests will not be permitted to consume drinks outside of the premises either on the steps to the hotel, in the front basement area, outside on the pavement or at the rear of the premises whilst smoking etc.

Panel wished also to limit smokers on the front doorstep to a maximum of 4 at any one time between 11.00pm and 8.00am.

The Panel solicitor reminded the parties of their appeal rights to the Magistrates Court under the Licensing Act and that appeals must be made within 21 days of written notification of the decision given at the meeting.

34. GOURMET PIZZA KITCHEN - APPLICATION FOR A PREMISES LICENCE

- 34.1 The Panel considered a report of the Head of Regulatory Services regarding an application for a premises licence under the Licensing Act 2003 for Gourmet Pizza Kitchen, 40 Western Road, Hove.
- 34.2 The applicant, Mr Philip Dono attended the meeting with his representative Mr Doug Simmonds to speak in favour of the application. Ms Juliette Hunting, Mr Peter Sofroniou, Councillor Ollie Sykes and PS Malcolm Wauchope and David Bateup(Sussex Police) attended to speak against the application.
- 34.3 The Licensing Officer outlined the application for a premises licence for a corner café currently being refurbished by the applicants. The applicant was applying for the supply of alcohol on and off the premises every day from 08.00 to 23.00. Off sales would be delivery only between 11.00 and 22.45 hours. The Hours of opening were 08.00 to 23.00 hours. Six representations had been received. They had been received from residents' associations, a local councillor and Sussex Police. There were concerns about all four licensing objectives and cumulative impact. The police objected to off sales. They did not object to on sales, ancillary to a meal. The operating schedule was attached as appendix A to the agenda.
- 34.4 The Licensing Officer reported that the premises was situated within the Cumulative Impact Area. Applications within this area should normally be refused. The presumption of refusal could be rebutted if it could be demonstrated that there would be no negative impact. The Licensing Officer referred to paragraph 2.7.1 of the policy. This detailed the matrix approach for licensing decisions. Each application should be considered on its own merits.
- 34.5 Sgt Wauchope set out the police representation as set out in their letter of 1st August 2012. He stated that Sussex Police had no issue with the on licence application. The conditions offered with the exception of one, and the hours of operation complied with the Statement of Licensing Policy and the matrix. The only query related to CCTV. To date there had been no reply as to whether CCTV had been fitted. The police requested that the installation of CCTV was made a condition of the licence.
- 34.6 Sgt Wauchope informed the Panel that Sussex Police were opposed to the application for an off licence. The premises was in the Cumulative Impact Area and the matrix dictated that no off licence applications should be granted. The police believed that if an off licence was granted, it would be yet another off licence premises in an area where there were already many off licences.
- 34.7 Councillor Marsh asked Sgt Wauchope if anyone could buy alcohol from the premises for off consumption should the application be granted. Sgt Wauchope replied that the application was for delivery only. The police considered that delivery was not a licensable activity.

34.8 Councillor Marsh noted that the police did not object to on sales, ancillary to a meal. She asked what would happen if a group came in and one person only ordered a beer. Would that be acceptable?

34.9 Sgt Wauchope stressed that alcohol should be ancillary to a meal. If one person did not want food that would not be acceptable.

34.10 Councillor Sykes set out his representation as detailed in his email of 21 July 2012. He reported that Full Council had extended the Cumulative Impact Area in order to recognise the problems in the area. There was more than enough alcohol available in that part of Hove and there was great sensitivity regarding the area. The Gourmet Pizza Kitchen was a restaurant and takeaway. The matrix stated that alcohol could be served until midnight.

34.11 Councillor Sykes stated that the applicant proposed to deliver alcohol until 22.45pm. It might be argued that this was a grey area. He considered that the Panel should be strict in the application of the Licensing Policy. The matrix stated explicitly that off licences should be refused in the Cumulative Impact Area. Councillor Sykes drew attention to the plans in Appendix B. The area included the basement. There was no need for the basement to be licensed.

34.12 Mr Sofroniou set out his representation as detailed in his email of 6 August 2012. Mr Sofroniou referred to paragraph 1.10.4 in the agenda which stated that the licensing authority's preferred position was to ensure that planning permission was in place before an application for a licence was made. He stressed that the whole front of the building had changed without planning permission.

34.13 Mr Sofroniou stated that there were 84 premises in the Special Stress Area. His main concern was the take away application. If someone went into the shop to order a pizza and a beer, it could not be enforced. It would be an off licence. Mr Sofroniou stated that it was not unreasonable to serve alcohol with food. However the restaurant area was very small and there were very few chairs. The patio area was minute.

34.14 Mr Sofroniou had concerns about safety in Brunswick Street West. It was a narrow residential area with a pub on the corner. There were safety issues regarding the delivery of alcohol.

34.15 Mr Simmonds asked if Mr Sofroniou was familiar with Graze Restaurant which was the same size as this application. Mr Sofroniou replied that he was not aware that it was exactly the same.

34.16 Ms Hunting set out her representation as set out in her email of 6 August 2012. She asked for clarification of the plans set out in Appendix B of the agenda. There was only room for 12 people to sit inside and 6 people outside the café. She asked how it was possible to fit 3 tables inside as there did not seem to be sufficient space inside. Ms Hunting considered that the main trade would be takeaway and delivery.

34.17 Ms Hunting referred to the private patio in Appendix B. She expressed concern that the pavements were narrow and the patio would not leave enough room in terms of public

safety and would cause public nuisance. Ms Hunting expressed concern about delivery vehicles in an area of double yellow lines and a bus route.

- 34.18 Mr Simmonds set out the case for the applicant. He explained that the premises had been a café for many years. They had had tables and chairs during that time. This had not caused a problem. The whole premises had A3 planning permission. The second part of the application related to off sales. The application was in the CIA and the Panel might want to grant part of the application and not the off sales.
- 34.19 Mr Simmonds explained that the premises was a small corner building. The seating inside was limited. The layout of the premises was set out on the plan. The works to the building were not completed yet. If granted, the applicant might need to come back with a variation.
- 34.20 Mr Simmonds stated that with regard to the inside of the premises, it was clearly stated that alcohol would only be served as ancillary to a substantial meal. This was an enforceable condition. The hours requested were limited. There would be no alcohol after 23.00 hours. The 08.00 hours start was purely to enable the applicant to display alcohol whilst the premises was open. It would not make any difference if alcohol was served later in the day, however the applicant had followed the council's Statement of Licensing Policy.
- 34.21 Mr Simmonds explained that the off sales related to a delivery service with a meal. He considered that this was enforceable. Mr Simmonds referred to page 56 of the agenda (operating schedule) which related to conditions for the delivery service. The food contingent of the total delivery would be £6.50 minimum. This could be raised to a higher sum if requested by the Panel. The application was about making alcohol ancillary to serving food. The application would not add to or cause problems in the CIA or further away.
- 34.22 Mr Simmonds stated that it would not be legal for a person to leave the shop with alcohol. He believed that the conditions were in place for a very specialised and very individual alcohol delivery service.
- 34.23 Mr Simmonds stressed that policies were in place to give guidance. He stressed that the applicant was in the position to promote the licensing objectives if there was an off sale delivery service. It would not cause public nuisance. The applicant did respect the CIA and respected that off sales were asked for outside of policy. Mr Simmonds stated that he was asking the Panel to accept the application with conditions. He stressed that there would be no late night deliveries or late night refreshment. The shop would be closed by 23.30 hours. The last delivery would be at 22.45 hours. Last orders would be at 23.00 hours.
- 34.24 Mr Simmonds stressed that the operation would not add to street drinking. He stated that the applicant would accept CCTV if this was the difference between granting or not granting the licence. If alcohol was served in the outside private area it would be served in shatterproof glasses.
- 34.25 Mr Simmonds believed that the application had detailed conditions to offset concerns. These conditions contributed to the licensing objectives.

34.26 The Chair asked for details about the nature of the restaurant. The applicant explained that the rear of the building was a food preparation area. There was an L shaped counter. Mr Simmonds explained that the capacity was 19 people.

34.27 Mr Sofroniou asked Mr Simmonds to explain why he had stated that the applicant might have to submit a variation in the future. Mr Simmonds replied that there might be a variation in relation to the layout. This was connected to the position of the toilets. The applicant wanted to bring these closer to the stairway.

34.28 Mr Sofroniou asked about the display of alcohol. Mr Simmonds stated that this was shown on the plan. The policy stated that alcohol should be displayed for the same period as the opening hours.

34.29 Ms Hunting asked for details of the delivery vehicles. The applicant explained that he was considering partly electrical vehicles.

34.30 The Panel Lawyer referred to the operating schedule on page 55 of the agenda in relation to the delivery service. She asked if the pre-orders were taken by telephone. Mr Simmonds replied that they might be taken by phone or via the internet. The orders could not be taken from the premises. Alcohol must be accompanied by the delivery of food.

34.31 The Panel Lawyer asked if delivery drivers would be part of the staff team. Mr Simmonds confirmed that they would be staff.

34.32 The Panel Lawyer asked if all types of alcohol would be delivered. Mr Simmonds replied that the applicant would have no objections to having alcohol restricted to just wine and beer and no alcohol over 6% ABV.

34.33 The Licensing Officer gave his closing observations. He referred to licensing guidance, the matrix and the need to promote the licensing objectives. The licensing authority must give weight to steps to promote the licensing objectives. The Panel needed to consider whether the application dealt with the issues relating to negative impact and whether there were exceptional circumstances to bypass the policy.

34.34 Sgt Wauchope set out his closing observations. He believed that there no difference between an off licence and a licence to deliver alcohol. It would be another source of alcohol in an area saturated with alcohol. It would have a negative impact on the CIA. He was not opposed to on sales if shatterproof vessels were used and CCTV was installed. Sgt Wauchope asked for the off sale application to be refused.

34.35 Councillor Sykes agreed with Sgt Wauchope. He had no problem with the restaurant. He did object to the off sales. He was worried about the emphasis of the sale of alcohol in Mr Simmond's case for the applicant. The area was saturated with alcohol. Councillor Sykes maintained his objection. If granted, the licence should be for the ground floor only. There was no need for the basement to be licensed.

34.36 Mr Sofroniou set out his closing observations. He concurred with Sgt Wauchope and Councillor Sykes. Mr Sofroniou was particularly concerned about the off sales.

34.37 Ms Hunting set out her closing observations. She stated that she was not totally convinced that the conditions would be successful. There were regular problems in the area. She requested refusal.

34.38 Mr Simmonds set out the closing observations for the applicant. He noted the concerns about off sales. He hoped he had demonstrated that the Panel could depart from the council's policy with the attached conditions in order to make the application legal and enforceable. He asked the Panel to grant the licence.

34.39 Mr Dono mentioned that most of the deliveries would take place outside of the CIA.

34.40 The Panel Lawyer asked if the applicant was applying to licence the basement. Mr Simmonds replied that the basement was used for storage and did form part of the application. This was confirmed by the Licensing Manager. He stated that if there was a change in licensable activities then the layout would have to change and a variation application made.

34.41 Councillor Marsh asked if the applicant needed a licence for storage. The Licensing Manager replied that a licence was not required for storage.

34.42 The Panel Lawyer asked Mr Dono if he had any intention to have licensable activities in the basement. Mr Dono replied that he did not intend to have licensable activities in the basement.

34.43 **RESOLVED** – The Panel have carefully considered the application and all the submissions made, along with the written report. The Panel also considered the detail of the Council's Cumulative Impact Policy.

The Panel have decided to grant this application for both on & off sales as the applicant has demonstrated to the Panel's satisfaction that the application would have no negative cumulative impact. This is granted subject to the conditions in the operating schedule, along with the condition relating to CCTV provision as stated on page 70 of the agenda.

The Panel also attach the condition suggested by Sussex Police that: "customers be forbidden to take glasses, bottles, and other drinking receptacles outside of the premises onto the pavement to consume alcohol whilst smoking etc." A condition offered by the applicant that only shatterproof drinking receptacles can be used in the outside seating area is also included.

The Panel consider that the off sale element of the application is limited and governed by strict conditions which the applicant has stipulated. Furthermore, the panel attach a condition that alcohol for off sales will be limited to wine and to lager, beer and cider of no more than 6% ABV.

The Panel solicitor reminded the parties of their appeal rights to the Magistrates Court under the Licensing Act and that appeals must be made within 21 days of written notification of the decision given at the meeting.

The meeting concluded at 1.55pm

Signed

Chair

Dated this _____ day of _____