

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

10.00am 1 OCTOBER 2018

G70, HOVE TOWN HALL

MINUTES

Present: Councillors: Bennett, Marsh and O'Quinn

Officers: Emma Bullen (Licensing Officer), Liz Woodley (Legal Advisor) and Kat Hoare (Democratic Services Officer)

PART ONE

42 TO APPOINT A CHAIR FOR THE MEETING

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

43 PROCEDURAL BUSINESS

(a) Declaration of Substitutes

There were none.

(b) Declarations of Interest

There were none.

(c) Exclusion of the Press and Public

In accordance with Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2003, the Licensing Panel considered whether the public interest in excluding the public from all or any part of the hearing outweighed the public interest of the hearing taking place in public.

RESOLVED - That the public be not excluded from the meeting.

44 CURRY LEAF CAFE LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

44.1 The Panel considered a report of the Executive Director of Neighbourhoods, Communities and Housing in relation to an application for a Variation of a Premises Licence under the Licensing Act 2003. Present at the hearing were: the Applicant's

representatives Stewart Cumming and Euan Sey (Applicant). Attending to make representations were: Councillor Deane (Ward Councillor).

Introduction from Licensing Officer

44.2 The Licensing Officer stated:

“This is an application for a variation to the existing premises licence for Curry Leaf Express at Brighton Station. The application proposes to vary the existing licence so that premixed ready drinks such as gin & tonic can be sold which is an amendment to condition 1 and an amendment to condition 2 that stipulates that alcohol must be served with £1.50's worth of food.

The licensing team received one representation from a local Councillor with concerns about the prevention of crime & disorder and that the premises is within the Special Stress Area. The representation could be found at page 29 of the agenda.

You will also find an agreed condition between the applicant and Police on page 30 of the agenda.

The adoption of the Matrix approach to licensing decisions found in the statement of licensing policy and this agenda (on page 10) includes a table with provisions for a terminal hour for all classes of license premises in a particular area, recognising the diverse operations and different risks presented by those premises.

However the policy is not absolute. New and varied applications in the special stress area will not be subject to the presumption of refusal but operators are expected to pay special attention when drawing up their operating schedules and make positive proposals to ensure that their operation will not add to the problems faced in the area. You can find the applicants operating schedule on page 19 of the agenda.

It is important to note that each application will be given individual consideration on its own merits.”

Questions to the Licensing Officer

44.3 In response to questions, the Licensing Officer stated the following:

- In response to Councillor O'Quinn's query, the Licensing Officer confirmed the original Licence for this applicant was granted on 21 June 2016. There were no representations and no panel and the Police and Applicant agreed to all conditions.
- The Applicant confirmed there had been a meeting regarding the Special Stress Area for the original agreement.
- In response to Councillor Marsh's query on the Condition 2 related to buying food and the fact that prices had not remained static since 2016, the Officer agreed that customers may be able to buy less food now for £1.50 in 2018.
- In response to Councillor Deane's queries about the highest alcohol percentage that was permitted within the licence, the Applicant answered that they mostly

- sold premium beers & lagers, all of which had a maximum alcohol percentage of 4% and that the permitted licence ceiling was an alcohol percentage of 6%.
- In response to Councillor Marsh's question about whether the Applicant could be classed as an Off Licence and what their classification was within the matrix, the Licensing Officer answered that they did not know. The Legal Advisor stated that the Panel could decide this as it was in a classification of its own, however they should note that customers could not sit down in this venue.

Representation from Responsible Authorities

44.4 There were no representations from Responsible Authorities.

Representation from Other Parties

- Councillor Deane made the following points in her representation:
 - Councillor Deane stated that the Applicant had been fortunate in obtaining the original licence due to the constraints of the Special Stress Area.
 - The Councillor queried why the Applicant would sell spirits to accompany takeaway food and suggested that this was inappropriate for a kiosk selling takeaway food, since residents should be safeguarded from drinking spirits on an empty stomach.
 - The Councillor argued that if the Applicant gained permission this would technically make them an Off-Licence and if the business ever closed in future, then another business could take over this licence and just sell alcohol.
 - The Councillor stated that, in the event that the Panel were minded to grant, that she requested that they should tighten up the ancillary condition regarding food, since the current designated amount of £1.50 would currently buy just one samosa at the kiosk. She hoped that the Panel would agree to the condition to be changed to: sales of substantial food ie one main dish of £7.99.
 - The Councillor did not agree with the email from Police regarding safety since she felt it did not cover the safeguarding of residents.
 - The Councillor questioned whether it was necessary for the Applicant to sell spirits at all and that she would prefer the Panel to say no to the sale of spirits.

Questions to the Other Parties

- Councillor Deane answered the following questions:
 - In response to the Chair's questions about the location of the kiosk in the station and surrounding North Laine area, Councillor Deane stated that the North Laine topped the charts for alcohol-related hospital admissions, and that the area had also suffered from anti-social behaviour such as shouting and urination in the streets at night which had occurred since the 2005 change in the law.
 - In response to Councillor Marsh's and the Chair's questions about whether there may be a concern about people arriving at the station from the train and then buying alcohol from this kiosk which had no seating, Councillor Deane confirmed that there was concern on this issue that people could buy alcohol and then engage in vertical drinking in the station and the streets nearby.

- In response to the Chair's query on whether Condition 3 adequately covered the problems encountered in the station and surrounding areas, Councillor Deane confirmed that there were stress points, citing football match days and payday Fridays as two examples.

Representation from the Applicant

44.7 The Applicant stated the following points in their representation:

- The Applicant confirmed that they had been trading at the station for 2.5 years and the main reason for this application was to bring the Licence in line with their other restaurants.
- They confirmed that a samosa was now priced at £1.75 as food costs had increased this year and that they were expecting them to increase by a further 15% in future.
- The Applicant confirmed that £2.50 was the price of the cheapest beer sold by their competitor Marks and Spencer (M&S) in the station and that the Applicant's cheapest drink was £3.50, so that customers seeking cheap alcohol to get drunk would not be buying from their kiosk.
- The Applicant confirmed that a lot of the takeaway food was eaten at home and that they served cold food at a discount and offered a delivery service.
- The Applicant clarified that they approached the variation in terms of price point and that the £1.50 originally represented the price of a hearty snack.
- The Applicant confirmed they hoped for a new lease of another six years at Brighton station and that they were planning a longterm tenure.

Questions to the Applicant

44.8 In response to questions from the Panel, the following was confirmed by the Applicant:

- The Applicant confirmed that the kiosk was shut during Special Stress events such as football and Pride, which was stipulated by GTR, so this would not change. In response to Councillor Marsh's question whether this was likely to be varied, the Applicant confirmed that since Platform 1 & 2 were usually shut, the kiosk's location was closed and barriered off even though Marks & Spencer was kept open.
- In response to the Chair's query about the difference in the range of food and the accompanied drinks offered across the three sites, the Applicant confirmed that offering to sell Gin and Tonic and the Crooked Beverages range was appropriate to accompany the food sold in this kiosk.
- In response to the Chair's question on which beverages would be sold at the kiosk, the Applicant stated that only Gin and Tonic and Crooked Beverages - a range of 4.5% low sugar vegan drinks would be sold. The Applicant also confirmed that no alcopops or cocktails would be sold.
- In response to Councillor Marsh's query about the addresses and range of food and beverages sold at the other two sites, the Applicant confirmed they were at: 60 Ship Street – a 70 cover licensed restaurant without Off Sales and Upper St

James Street - a 30 cover licensed restaurant with Off Sales and full range of wine and spirits.

- In response to Councillor Marsh's query on what a Crooked Beverage drink was and why they required a change in the licence to sell it, the Applicant confirmed that this was a grey area as this beverage was closer to beer but was not classified as a beer – so therefore they could not include it in their current list.
- In response to Councillor Marsh's question about why the Applicant wanted to be an alcohol-driven venue, since its customers ordered coffee and food from 6am and could buy alcohol without food from nearby competitors Budgens and Marks & Spencer, the Applicant stated that their customers asked for specialised alcohol to accompany their street food and that staff would know and recommend the premium beers that go with the brand. At present staff have to say no or ask customers to pay an extra £1.50 on food and the customers often go elsewhere to buy the alcohol.
- In response to a question from Councillor Marsh on the Applicant's drink and food menu in relation to the station setting, the Applicant stated that they had recently applied for a Licence for another seaside town, and therefore it would be likely that Brighton station would in the future be the exception across all of their sites to have these restrictions
- In reply to Councillor Marsh's query about the different type of licences granted to the Applicant's different venues, the Applicant confirmed that they offered customers delivery of alcohol with food via the Deliveroo app, but when people lived locally they wanted to add a specific drink to their order, often a craft beer as part of their brand.

Summaries

44.9 The presenting Licensing Officer summarised and stated the following:

“This is an application for a variation to the existing premises licence for Curry Leaf Express at Brighton Station. You have heard from all the people present.

Licensing Guidance states that: In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to.

It is important to note that each application will be given individual consideration on its own merits.

After considering all the relevant issues, the Licensing Authority may grant the application subject to such conditions that are consistent with the operating schedule.

If the Panel decide to grant the application then any conditions added to the licence to meet the Licensing Objectives should be clear, precise and enforceable.

Alternatively, the licensing authority may refuse the application on the grounds that this is appropriate for the promotion of the licensing objectives”.

44.10 The Chair stated that she agreed with Councillor Deane that the Applicant did not quite fit the matrix and that it was important to ensure that customers bought food when selling alcohol and to be mindful of the licensing policy. The Chair said that the Panel may be willing to consider granting a licence for Gin and Tonic and the range of Crooked Beverage drinks only when bought together with a food item, thus a clause would be required to ensure that a food price stated could be adjusted to match inflation.

44.11 The Legal Advisor stated that there could be a legally worded clause added in order to futureproof this Licence, should another applicant take over the business in the future. The Legal Advisor suggested limiting alcohol sales to 7% of turnover and the Applicant confirmed that they had no issue with this.

44.12 **Resolved:** The Panel made the following decision:

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

In relation to the variation of Clause 1 to expand the alcohol offer, we are satisfied that allowing a wider range of beverages - specifically RTD gin and tonics and Crooked beverages not exceeding 6% ABV - will not undermine the licensing objectives. However, the inclusion of spirits to the alcohol offer reinforces our view that alcohol sales must be accompanied by food. We are concerned that on the applicant's own evidence, £1.50 no longer covers the cost of a samosa. We suspect that in 2016, when the licence was first granted, that it did. We believe that the intention behind the imposition of such a condition was to ensure that a meaningful snack was capable of being purchased for the price. To maintain that objective, we believe that the minimum price should be reviewed annually and increased in line with the Consumer Price Index.

We agree that no advertising of alcohol in or around the station is consistent with promotion of the licensing objectives, and are pleased to note that the applicant was willing to agree a no advertising condition.

To conclude, the application to remove Condition 2 is refused.

The application to extend the alcohol offer is permitted as set out in revised Condition 1 below:-

The premises will only sell premium speciality bottled or canned beers, lagers, ciders, ready to drink gin and tonics and Crooked beverages and no other types of alcohol will be sold at the premises. No beers, lagers, ciders, ready to drink gin and tonics and Crooked beverages with an ABV content exceeding 6% will be sold other than premium speciality bottled or canned beer, lager or cider.

Condition 2 is amended to read:-

The selling of alcohol will be ancillary to the main food led purpose of the business, and alcohol will only be supplied with a food order, No alcohol sales will be made without an accompanying food order, the minimum value of the food order being £1.50. The minimum food spend shall be adjusted on an annual basis effective on 1 October each year based on the Consumer Prices Index rate of inflation.

A new condition is added to the licence:-

No external advertising of alcohol, be it by A frames or posters, to be situated within Brighton Railway Station or fixed to the external walls of the premises.

The meeting concluded at 11.37 am

Signed

Chairman

Dated this

day of