

NO. 1 RESTAURANT LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

BRIGHTON & HOVE CITY COUNCIL

LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

10.00am 19 JULY 2019

ROOM G70, HOVE TOWN HALL - HOVE TOWN HALL

DRAFT MINUTES

Present: Councillors: O'Quinn (Chair), Ebel and Simson

Officers: Sarah Cornell (Licensing Officer) Donna Lynsdale (Licensing Authority Officer), Liz Woodley (Legal Advisor) and Hannah Staplehurst (Police Licensing Officer) Andre Bernascone (Police Licensing Officer) Kat Hoare (Democratic Services Officer)

Applicant: Nicholas Perkins, Dean Wilson LLP (Solicitor), Mrs Maureen Ting, Mrs Mei M Xue, Mr Ryan Zhu (Associate)

PART ONE

19 TO APPOINT A CHAIR FOR THE MEETING

19.1 Councillor O'Quinn was appointed Chair for the meeting and introduced the panel and all present.

20 PROCEDURAL BUSINESS

20a Declaration of Substitutes

20.1 There were none.

20b Declarations of Interest

20.2 There were none.

20c 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 and press from all or any part of the hearing outweighed the public interest of the hearing taking place in public.

20.3 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of Item 21.

21 No.1 Restaurant LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

21.1 The Chair introduced the Panel

21.2 The Panel considered a report of the Director of Neighbourhoods, Communities and Housing to determine an application for a Variation of a Premises Licence under the Licensing Act 2003 for No.1 Restaurant.

Introduction from Licensing Officer

21.3 The Licensing Officer Sarah Cornell stated the following:

“This is an application for a variation to the existing premises licence for No. 1 Restaurant, 67 Ditchling Road. The applicant is asking to vary the operation of the premises from a take away with alcohol deliveries to that of a restaurant with on sales of alcohol only and ancillary to the supply of substantial food. Please note that the original app form had a typo in it (stating that the premises was to open until 03:00 instead of 00:30 on a Saturday), both LNR & alcohol stated midnight. This was rectified very quickly by the agent and the Sat hours were updated to 00:30 in line with everything else.

The premises falls within the special stress area.

The licensing team received 6 representations. They were received from Sussex Police, the Licensing Authority, a local councillor, and local residents. The Local Councillor has sent her apologies for the hearing but asks that you still take her written representation into account.

The Representations had concerns relating to Prevention of Crime and Disorder and Prevention of Public Nuisance.

The Representations are attached at Appendix C from pages 32 of today's 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.

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.

On receipt of any application in the SSA, where a relevant representation has been made, the licensing authority will scrutinise the application carefully and will look at the measures proposed in the operating schedules and compare them to the measures set out in

Appendix A, Licensing Best Practice Measures (which can be found from page 16 of the agenda). Where discretion has been engaged, those applications which fall short may be refused or conditions applied to comply with policy measures.

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

Questions to the Licensing Officer

- 21.4 Councillor Simson asked whether the Licensing Authority considered karaoke to be licensable under the Licensing Act and the Licensing Officer confirmed that it was after 11pm – when it was considered as the performance of live music, with it being a de-regulated activity before 11pm.
- 21.5 The Chair asked how long the premises had held a licence and the Licensing Officer replied that the licence had been held from May 2013 and Mrs Xue had been a DPS since May 2019.
- 21.6 Councillor Simson queried whether it was only the Ground floor of the premises that was covered by the licence and the Licensing Officer replied that this was correct and that the Basement was used for storage only.

Representations from Responsible Authorities

Representation from the Licensing Authority Officer

- 21.7 The Licensing Authority Officer, Donna Lynsdale addressed the Panel and stated the following:

“I wish to make a representation on behalf of the Council’s Licensing Team, in their capacity as a responsible authority, in relation to the above application for a variation to the existing licence to change from a takeaway with off sales of alcohol only, to a Restaurant.

The applicants have held a premises licence for 67 Ditchling Road, Brighton since May 2013. This licence is for Late Night Refreshment and Off-sales of alcohol only until Midnight and was limited to the sale of Beer, Cider and Wine only. The premises ran as a food takeaway.

On 26 June 2018, I received an email from Mr Lei Wang advising that he was from 67 Ditchling Road. He enquired whether he could extend the opening hours until 2.30am and could I help him with the application. I sent a response giving guidance and also advised that he should look at our Statement of Licensing Policy first.

On 19 November 2018, I was allocated a job sheet about a complaint from a local resident that the premises were holding noisy parties at the premises, often past 2am. I visited the premises on several occasions but could not gain entry. On 6 December 2018, I wrote to the Premise Licence Holder about carrying out licensable activities and for them to contact me. I received no response.

On 17 December 2018, I was allocated another job sheet to carry out a licence inspection following an application for a Transfer of the Premises Licence. Again, I was unable to gain entry into the premises.

Although the license was transferred in to the name of Yingbo Food Culture Limited on 29 November 2018, one of the directors of this company is the person who previously held the Premises Licence solely in their name: Ting Huang. Therefore, there is continuity in the management of this property since 2013.

On 18 January 2019, I was working with PC Andre Bernascone carrying out evening licensing visits. At this time we were able to get entry. We noted from the plans on the premises licence that it had been completely refurbished and substantially changed. In the area shown on the current licence plans as the customer area and kitchen we found tables and chairs and a fully equipped bar with a cooker behind the counter that was not connected. They no longer had a kitchen and additional toilets had been added. What is shown on the plans as store rooms had been knocked through and there was a fully equipped Karaoke room and a separate Mahjong Room.

The owners arrived. At first they denied receiving my letter, then confirmed they had received it, but had been too busy to contact me.

I advised that they could not continue operating as a bar and karaoke room and they should seek independent legal advice.

On 25 January 2019, my colleagues in the Environmental Protection Team served the premises a Notice to Abate a Statutory Nuisance Environmental Protection Act 1990 - Section 80 Notice.

The applicants also have two other premises in the City. A restaurant and a supermarket. These premises have also had breach of conditions letters sent and numerous visits. These have included not-compliance with plans of the premises, licensable activities, smoking on the premise and allegation of selling alcohol to underage students from Bellerby's College. Until recently, they had made no effort to comply with either of the additional Premises licences.

In November 2017, the applicants applied for a variation on their Restaurant in Queens Road for additional hours and to include karaoke. This application was submitted after we had received numerous complaints of public nuisance. Following a hearing this application was refused.

Based on my interactions with the applicants I have little confidence in either the Premises Licence Holder or the other individuals who are running the businesses. It is my belief that the applicants, once the licence is granted will still run the business as a karaoke bar.

I ask the Panel to consider my comments when making their decision, and that this application be refused."

Questions to the Licensing Authority Officer

- 21.8 The Chair enquired whether there was a supermarket situated next door to the restaurant premises and the Licensing Authority Officer confirmed that there was.
- 21.9 Councillor Simson asked about the times of day that the Licensing Authority Officer had tried to gain entry to the premises in their original visit and whether the premises was locked. The Licensing Authority Officer replied that it was 6.30 pm in the evening and the windows were shaded and the door locked and that there were no customers, just a person cleaning the floor.
- 21.10 Councillor Simson asked the Licensing Authority Officer if she considered there to be sufficient cooking facilities on site for a restaurant and the Licensing Authority Officer replied that in her opinion the facilities were not sufficient.
- 21.11 Councillor Simson then asked whether there was any connection between the owners of this premises and the owners of the premises in Queens Rd and the Licensing Authority Officer stated that both the directors and the DPS had always been consistent as Mrs Ting Yan and Ms Lee Wang and that the premises was not currently trading.
- 21.12 The Chair asked if any of the Licensing Authority or Police Licensing teams had tried to meet with the owners and the Licensing Authority Officer replied that initially PC Bernascone had visited but that the owners had not received the letters which were subsequently hand delivered to the property. She said that after this, the applicant had said that they had been too busy to reply to the letters and that then only after the police visit that independent legal advice could be provided.
- 21.13 The Chair then asked whether extra toilets were being built and the Licensing Authority Officer stated that there were tables and chairs, a new bar at the front of the premises and a cooker which had not been connected at the rear. She confirmed that there was a door leading to two new toilets and a side room with a Mah Jong table and another fully equipped karaoke room.
- 21.14 Councillor Ebel asked whether the Licensing Authority Officer had seen any menus or indications that food had been served on the premises and the Licensing Authority Officer confirmed that she had not seen any.
- 21.15 Councillor Simson asked whether it had appeared that the bar had been used and the Licensing Authority Officer replied that it had since the optics did not have full bottles of alcohol. She also confirmed that she had seen posters advertising the karaoke night at this premises at the owner's other premises at Queens Road.
- 21.16 Mr Perkins the Applicant's solicitor asked whether these questions about his client's personal character were relevant. The Licensing Authority Officer replied that having had numerous visits and dealings with his client and witnessed these breaches to the licence, she did not understand why the Applicant had not applied for a Review instead of a Variation, since the premises had been closed since the breaches had been reported. Mr Perkins disputed the claim of his client not making contact and asked the Licensing Authority Officer why she had not contacted himself directly, since she was aware of his representation of the client since March 2019. The Licensing Authority Officer replied that she had contacted Mr Perkins and that it was her belief that the

karaoke and problems with the noise would continue, since she felt the intention was for the premises to operate a karaoke bar. Mr Perkins replied that the Applicant had commissioned a sound engineer to produce a report and had worked with a specialist engineer to propose remedial measures for the noise complaints and that this showed that the Applicant was serious in addressing this issue. He confirmed that there would be no karaoke offered in the venue, until this was done and that he failed to see why the Applicant should not comply with the relevant authorities. The Chair agreed that the noise report was highly relevant to this application.

Representation from the Police Licensing Officer

21.16 The Police Licensing Authority Officer, Hannah Staplehurst addressed the Panel and stated the following:

“As we have heard this is an application for 67 Ditchling Road to vary their licence from a take away venue selling only off sales of beers and wines to become a restaurant.

As stated in the Sussex Police Rep letter this premises is known to the licensing team following a joint visit with the licensing authority. During this visit it was established that a number of conditions on their licence were being breached.

PC Bernascone who was present at the visit discovered a fully stocked bar including spirits, plus through a doorway behind the bar there was large Karaoke Room and Mahjong room. It became evident that there was no kitchen or menu on site to produce food therefore the premises could not be operating as a Take away service. A big cause for concern is that from this visit Sussex Police established that 9 of the premises licence conditions were being breached, which were highlighted in the letter written by PC Bernascone attached with my representation letter.

Therefore the licensing team feel we have no confidence in the management of this premises to operate as a restaurant, adhere to further conditions which would be added to their licence should it be granted and responsibly serve alcohol to members of the public.

We requested a visit to the premises this week via email with the applicant's solicitor. We attended on Wednesday 17th July at 10am and met Nick and the team, unfortunately the DPS was not on site.

We found a limited kitchen and Prep area had been set up behind the bar, but in our opinion the facilities would be questionable regarding operating a full restaurant. It was also noted the former Karaoke room had not been substantially altered to reflect the proposed use. The room still has the holes in the walls where all the previous Karaoke equipment was. This would allow the equipment to be easily reinstalled at a later date.

Overall, the concerns of Sussex Police are that we have no trust in the management of this premises to operate as a restaurant, adhering to restaurant conditions following the previous breaches and that we feel the premises is not fully compliant of a restaurant.

- 21.17 The Chair asked if it was easy to replace the karaoke equipment since the holes still remained in the walls where they could be easily re-secured and the Licensing Authority Officer agreed that it was. The Chair stated that it would be more useful for the applicant to come back and vary the licence for karaoke. The Chair asked why the DPS was not at the required meeting at the venue on the previous Wednesday and Mr Perkins replied that the DPS had not been asked to be on site at the Police meeting, but that he was there himself.
- 21.18 Councillor Simson looked at the photos provided and asked whether the layout of the premises was conducive to being a bar or a restaurant and the Police Licensing Officer replied that a barbecue pit had been fitted to the tables on the left hand side of the bar and that there was an oven that had been plugged in but with changes made to the bar area and that she had questioned how different meats could be prepared and cooked within this set up. She confirmed that she walked through to the rear of the premises where there were toilets, a mah jong room and a karaoke room without the karaoke equipment and that they had been told that the applicant was waiting to install the equipment when the licence was granted. Councillor Simson then asked about the changes in the premises over the two visits and the Police Licensing Officer stated that her concern was that the oven and sink provided was more of a domestic set up and that she was not convinced that this was for commercial use.
- 21.19 The Chair queried the room plans and asked about the VIP dining room and the Police Licensing Officer confirmed that this was the room which was the assigned karaoke area. Councillor Ebel queried whether they had seen any fridges and the Police Licensing Officer confirmed that fridges were located in the basement of the premises.

21.20 **The Applicant**

Mr Nicholas Perkins, Solicitor from Dean Wilson LLP represented the Applicant and highlighted the following points within the application:

- There was an error on p. 31 of the plan, where there will be a dining table – not a Mah Jong table.
- This variation was for a complete relaunch of the business, and that a new experienced DPS would be brought in for a restaurant with on-sales only.
- The new hours they seek are 11 am – midnight and the premises would be cleared within a half hour of that.
- There was an error in the application, since the premises was not requiring to be open until 3am
- Due to the recent problems already discussed, the applicant has suffered a great deal financially with the closure of the premises for 6 months and they now wish to comply with all the licensing conditions and that the premises was already fully compliant with the matrix.
- He showed the Panel sample food menus and photos of the premises
- He explained the new restaurant concept of customers cooking food at their own table at 18 tables within the venue and asked the business associate Ryan Zhu to give an explanation of this concept and how it would work within the restaurant.

- He confirmed therefore that the restaurant would serve substantial food.
- He confirmed that there would be a total of three Personal Licence Holders for the premises which included: Mrs Ting, her brother who lives upstairs above the premises, as well as an experienced DPS who would be on the premises 2 – 3 hours per day and since she would also be based at another premises, she could be available in person at this premises within 2-3 hours.
- He confirmed that the Panel should be satisfied that the client would comply with the conditions of the licence and that he had advised them that they would face a review with poor prospects if they did not comply.
- He confirmed that the Applicant was interested in the possibility of running the karaoke in the future until the noise issue was resolved, but not at present and that the equipment had been returned and that the Applicant had not redecorated the room due to lack of funds at present.
- He confirmed that the Applicant was working with a sound engineer to solve the problem of the noise issue.

Questions to the Applicant

- 21.21 The Chair asked about which food would be cooked on the table firepits and which in the kitchen area. Mr Zhu explained that the concept was similar to a Japanese restaurant, where thin strips of meat and fish were cooked quickly on the firepit at the table and that therefore the staff would prepare the meat and vegetables and provide the sauces in the kitchen area. He confirmed that all customers would have a BBQ hotpan and that they were trying to change the back section of the room to facilitate this but had been unable to at present due to financial losses. He confirmed that there was also a cooker in the kitchen area and that the menu had not been finalised and that similar to the noodle soup served at the restaurant chain Izu, there could be a fast turnover of noodle products. He also confirmed that in Asia it was common for restaurants to have a VIP dining area where customers played Mah Jong or other card games.
- 21.22 The Chair queried the menu since she felt that much of this food could not be cooked on a firepit and would require a kitchen. Mr Zhu replied that it was mostly a Korean style BBQ concept that was still being worked upon.
- 21.23 The Chair asked how many covers the restaurant could serve including the VIP room and Mr Perkins replied that there were 14 in the front and approx. 14 in the back area. When the Chair queried about the large size of menu for the small amount of customers and Mr Zhu replied that they had to work around the customer.
- 21.24 Councillor Simson asked whether the Applicant understood that the Responsible Authorities were concerned about this premises, bearing in mind the recent history and Mr Perkins replied that they fully understood this. Councillor Simson also queried the difference between the variation of the licence and a completely new application and Mr Perkins confirmed that the Applicant already had the licence and that they were applying to vary it.
- 21.25 Councillor Simson asked about whether the Applicant intended to open during the day and Mr Perkins answered that the Applicant was seeking a flexibility on hours during the day, with the main business taking place in the evening with private parties such as weddings.

- 21.26 Councillor Simson also asked if the Applicant had sought legal advice on offering karaoke and if the application was granted whether there may be a condition stipulating no karaoke on the premises. Mr Perkins replied that it may be possible to operate karaoke in the early evening and the Licensing Officer stated that this could only happen after a review and Councillor Simson confirmed that if the panel were minded to offer the licence the a no karaoke condition could be placed on it. Mr Perkins replied that until the noise problem had been sorted, other than a few weekends where a TEN notice could be operated, the Applicant would not come back with karaoke.
- 21.27 Councillor Simson asked to speak to the DPS present, Mrs Xue regarding her licensing experience and asked if she could confirm that she had been a personal licence holder for 6 years at the two premises at No.s 58 and 60 Queens Road – The Famous Sechuan and Sechuan Garden. Mrs Xue replied she had worked at 60 Queens Road for 6 years with a personal licence and was still working there at present.
- 21.28 Councillor Ebel queried the small size of the kitchen which was 2 – 3 metres square and she asked how this could accommodate the kitchen appliances required for the menu such as a deep fat fryer and steam fans. Mr Zhu confirmed there was a fryer and noodle cooker in addition to a bamboo style cooker and domestic oven and that they were thinking of adding a small barbecue cooker to these. Councillor Ebel then queried where plates were stored and Mr Zhu replied that behind the bar there was space for fridges, dishwasher and cutlery and that there was no storage problem. The Chair also queried the food preparation surfaces and Mr Zhu replied that food would be stored before or during opening hours in the food preparation area.
- 21.29 The Chair asked about parties for employees that had taken place at the Queens Road premises and queried whether the Applicant had meant private parties, since Councillor Deane had remarked on the issue of karaoke noise until 2 – 3 am. The Chair also stated that she was concerned that the Applicant had already spent money on changes to the bar, without realising that the licence had to be changed. Mr Zhu replied that it had always been the intention to serve food in order to accommodate drinks, since it was possible for customers to go to a bar or club in Middle Street. He confirmed that they wanted to comply with the licence and that the Asian culture was different with food and TV on a screen playing music. He also explained that regarding the parties referred to, some employees had got hold of the keys and caused an incident and that this was an unusual situation. Mr Perkins confirmed that this incident was an aberration in the previous year and that the DPS should have understood the licencing laws.
- 21.30 The Chair stated that putting a bar up was not a grey area and that the DPS was not competent and should have been aware of the situation and she queried whether the Applicant had confidence in their current DPS. She also stated that in the past, a translator had been brought along by the applicant and she was concerned that the DPS did not understand what was being said in the current panel.
- 21.31 Councillor Simson questioned Mrs Xue again on whether she was currently the DPS at 60 Queens Road or of which premises and that there was a confusion on this issue, which was important to clarify. PC Bernascone stated that on record the premises License Holder was Yei Yan Yei. Councillor Simson again queried that this did not seem to have been changed recently and was confused about the situation of who the

current DPS was. She asked again for confirmation that between 2014 and the present, Mrs Xue had not been the DPS of any premises. Mr Zhu translated to Mrs Xue and she confirmed that this was correct. Councillor Simson then concluded that Mrs Xue 's only experience as a DPS was for a duration of 2 years, five years ago.

The Chair then called for a short break and the Panel then recommenced at 11.32am.

- 21.32 Councillor Simson stated that Mrs Mei was a DPS at 60 Queens Road from 2012 – 14 and had not held the post at any other premises. She asked whether she was currently employed by the Applicant and the Applicant said she was not, but that she would be employed at 60 Queens Road as well as the current premises at the same time. Councillor Simson queried whether she was experienced enough since she had not held a DPS post for five years and Mr Perkins confirmed that she was. Mrs Ting stated that Mrs Mei had been the owner of 60 Queens Road in 2011 and that she thought she could be the DPS. She confirmed that she was not the owner now and instead had a takeaway shop owned by another member of the Chinese community.
- 21.33 The Chair asked why Mrs Mei stopped being the DPS at 60 Queens Road and whether she was currently employed at 60 Queens Road. Mrs Mei replied that she had a part time job elsewhere previously and that now she was employed full time at 60 Queens Road. Mrs Xue then clarified for the correct translation that she had been the DPS at No. 60 from 2012 – 2013.
- 21.34 Councillor Simson asked Mrs Xue how she understood the role of a DPS and Mrs Xue replied that she understood there was a rule concerning no high percentage alcohol when she was working at No. 60 and that it was important to check the age of customers if they look like they are under 25, by checking ID.
- 21.35 PC Bernascone asked whether the Applicant had checked the fire regulations for the kitchen, since this was raised at a recent visit to the premises in regard to the fire pits and kitchen which were positioned next to the bar area with alcohol. He also mentioned that the kitchen was near to the only exit in the premises and advised that the fire regulations needed to be checked so that money was not wasted by the applicant on alterations that did not comply with fire regulations. Mr Perkins and Mrs Ting confirmed that there was a fire assessment of the premises that was currently ongoing.

Summaries

- 21.36 Sarah Cornell, Licensing Officer stated the following:

“This is an application for a variation to the existing premises licence for No. 1 Restaurant, 67 Ditchling Road. The applicant is asking to vary the operation of the premises from a take away with off sales of alcohol only to that of a restaurant with on sales of alcohol only and ancillary to the supply of substantial food. You have heard from all the parties present.

Just to clarify the applicant would not have to apply for a variation to their licence to have karaoke up until 11pm as this is de-regulated under the Licensing Act 2003. Anything after 11pm would need to be licensed and therefore a variation would be required to add live music. As discussed during questions, it would not be lawful to put

a condition on the licence if this variation was granted to prohibit karaoke, this can only be done at a Review stage.

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:

- the steps that are 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 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 and those that have been canvassed at this hearing.

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. “

21.37 The Police Licensing Officer gave a brief summary, stating that the Police had concerns that they had already stated and invited the panel to reject this variation.

21.38 Donna Lynsdale, Licensing Authority Officer gave the following summary:

“Based on my interactions with the applicants and individuals involved in the premises, I have little confidence in either the Premises Licence Holder or the other individuals who are running the businesses and ask for this to be considered when making your decision.”

21.39 Mr Perkins, Solicitor to the Applicant stated that the starting point should be that the Applicant currently complied with the Licensing Policy and also complied with the Matrix. He stated that the Applicant had demonstrated that substantial food would be available and that this would be ancillary to alcohol at the premises. He confirmed that if this variation was not granted, then this premises could revert to take away food and off sales, which would cause more problems in the local area, which his clients did not want. He confirmed that there were concerns and conditions which were relatively straightforward that needed to be complied with and that the Panel should be satisfied that if there had been a breach of the Licence, there would be a review, which would not prejudice any possible outcome. He confirmed that it was evident that the Panel was concerned that the DPS did not have a good enough understanding of the role and that therefore a new DPS would be brought in following discussions with the Police. He confirmed that although they would want to sell a full range of alcohol the main range would be a selection of beers.

The Chair thanked everyone present and said to the Applicant that they should receive a written decision within 5 working days via email.

Decision:

21.40 **RESOLVED** – The Panel’s decision was as follows:

The applicant, Yingbo Food Culture Limited was represented by a solicitor, Nicholas Perkins.

The premises currently has the benefit of a premises licence authorising the supply of alcohol for consumption off the premises from 11am to midnight every day, and late night refreshment from 11pm to midnight every day. The variation proposed a change in the operation of the premises, from a take away with alcohol deliveries to that of a restaurant to which the supply of alcohol will be by on sale only and ancillary to the supply of substantial food. The hours for the sale of alcohol for consumption on the premises remained the same, namely 11.00 to 00.00, with an additional 30 minutes to clear and close the premises.

The application was for a variation of a premises licence within the Special Stress Area (SSA). This is an area of special concern in terms of the levels of crime and disorder and nuisance experienced. Paragraph 3.3.3 of the council’s Statement of Licensing Policy (SOLP) states that variation applications within the SSA will not be subject to a presumption of refusal, but operators will be expected to pay special attention when drawing up their operating schedules and to make positive proposals to ensure that their operation will not add to the problems faced in these areas.

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.

The council has adopted a matrix approach to licensing decisions. It provides a framework of what the licensing authority would like to see within its area and gives an indication of the likelihood of success or otherwise of any particular application. The SOLP provides that the policy as represented in the matrix will be strictly adhered to, subject to a number of reservations. The matrix indicates that restaurants within the SSA with a terminal hour of midnight are likely to be approved.

Relevant representations were received from the Police, Licensing Authority, a local ward councillor and local residents. The representations engaged the Prevention of Crime and Prevention of Public Nuisance licensing objectives.

The Panel heard from Hannah Staplehurst Police Licensing Officer and PC Bernascone on behalf of the Police, and Donna Lynsdale on behalf of the Licensing Authority. All reiterated their objections as outlined in their written representations. Additionally we heard from the Police that they had visited the premises on 17 July. They noted limited kitchen and food preparation space on the ground floor. The sink

and oven were on a domestic scale, and not obviously suited to commercial use. The oven was plugged in. There were fridges for drinks on the ground floor and further fridges in the basement.

In the applicant's presentation and in response to questions a number of points were made, including:

- The variation application was a relaunch application.
- The application was consistent with the matrix. The representations from the Police and Licensing Authority did not go to the application itself. The Panel needed good reason to depart from the council's own policy.
- The past breaches of licence were admitted.
- An experienced DPS was in place and was in attendance at the hearing. She had been a DPS for 5-6 years. She would be in attendance at the premises 2-3 hours a day and could attend at short notice should the need arise. Additionally, one of the directors of the applicant company held a personal licence.
- The premises had not traded since February 2019. The applicant wished to re-open the premises as a restaurant, thereby generating income to underwrite further improvements. Food would be cooked by customers at the fire pit on each table.
- The applicant considered that most business would be transacted in the evening but wanted the flexibility to open during the day.
- A full alcohol offer was proposed, in contrast to the beer, cider and wine restriction on the existing take away/off-licence.
- Karaoke, which was a thread running through the representations did not form any part of the application. In any event, following deregulation, karaoke before 23.00 hours was not a licensable activity. That the applicant was working with a sound engineer to prevent noise break out was indicative that the matters raised by the January 2019 noise abatement notice were being taken seriously.
- Sample menus of the food offer were produced to demonstrate the substantial nature of the food.
- Given the nature of the food offer, only limited cooking facilities and food preparation space was required. There was ample refrigeration and food preparation space in the basement which did not form part of the licensed premises.
- Their solicitor had advised his clients at length of the need to comply with the conditions of any licence, and of the probable consequences of non-compliance, given the recent history of the premises.

Having looked at the on-line public register of Licence applications, the panel sought clarification of the named DPS's experience. It appeared from the register that she had only been a DPS for 2 years from 2012 to 2014. In closing, the applicant's legal representative indicated that a condition to restrict the licence from coming into force until such time as a new DPS, following discussions with the Police, was appointed, would be acceptable.

The Panel considered the individual merits of the application as well as the policy context. They considered the applicant's Operating Schedule and noted that the proposed conditions were consistent with a restaurant. There were suitable conditions directed towards the prevention of crime and prevention of public nuisance. In particular they noted that requirements for the Licensee to ensure that excessive noise did not come from the premises and that staff should actively monitor the area outside the premises to ensure that customers did not gather there – whether smoking or not – so as to cause a nuisance to local residents. The panel reminded themselves of the right of responsible authorities or any other person to call for a review of the licence under section 51 of the Licensing Act 2003.

In considering the application, it was noted that the premises had ceased trading in February; the applicant had instructed a sound engineer to address noise issues and had taken professional legal advice about the variation application. These steps were to the applicant's credit.

The panel understood the Responsible Authorities' concerns about the applicant company's ability to operate the premises in accordance the conditions of licence, given the admitted historic breaches of the licence by the applicant and by persons associated with the applicant. Given that history, it was considered that an experienced DPS was essential. The panel were concerned at the current DPS's lack of recent experience in the role, and her apparent lack of understanding of the duties attached to the role. The applicant's offer to appoint a new DPS after consultation with the Police was welcome. It gave the panel greater confidence regarding the appropriate operation of the premises in the future.

Looking at the variation application in the round, the panel considered that with appropriate conditions, it could be granted. They did not consider that a restaurant would add to the problems associated with the area.

The licence is therefore granted subject to the following conditions:-

- i) The licence shall not come into force until such time as, following consultation with the Police, a new DPS has been appointed.
- ii) Conditions consistent with the Operating Schedule. (For the avoidance of doubt, the existing Annex 2 conditions are revoked)

The mandatory conditions continued to apply to the varied licence.

The Panel considered that the imposition of conditions was appropriate for the promotion of the licensing objectives.

The meeting concluded at 11.40 am

Chair

Signed

Dated this

day of