

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

10.00am 9 FEBRUARY 2022

VIRTUAL

MINUTES

Present: Councillor Henry (Chair); Appich and Moonan

Officers: Sarah Cornell (Licensing Officer), Rebecca Sidell (Lawyer) and Clare Chapman (Democratic Services Officer)

PART ONE

1 TO APPOINT A CHAIR FOR THE MEETING

Councillor Henry was appointed Chair for the meeting.

2 PROCEDURAL BUSINESS

2a Declaration of Substitutes

There were none.

2b Declarations of Interest

There were none.

2c Exclusion of the Press and Public

In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Licensing Panel considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I of the Act).

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

3 FLOWER BURGER LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

In attendance:

For the premises: Enrico Cantoni, Operations Manager
Yasmin Coot, Operations Support Manager
Trilok Seebundhun, General Manager

Responsible Authorities: Donna Lynsdale, Licensing Authority
PC Hannah Staplehurst, Sussex Police

- 3.1 The Panel considered a report of the Executive Director of Housing, Neighbourhoods and Communities which required them to determine an application for a new premises licence at Flower Burger, 62 North Street, Brighton, BN1 1RH.

Licensing Officer

- 3.2 The Licensing Officer presented the application and summarised the contents of the report.
- 3.3 In response to a question from the Panel, the Licensing Officer confirmed there were two licensed premises nearby including Itszu and Lavish. Burger did not have an alcohol license.

Licensing Authority

- 3.4 The Licensing Officer informed the Panel that on 1 December 2021 an email was received from Yasmin Coot, the applicant, advising that they had applied for a premises licence for the sale of alcohol.

On 2 December 2021 an email response was sent advising that until the licence had been granted, the applicant was not authorised to sell any alcohol.

On 14 December 2021, Police Licensing visited the premises following intelligence that they were selling alcohol. At the time of this visit they noted that the premises was displaying and selling alcohol without a premises license. On 16 December 2021, following this visit, the Licensing Officer wrote to the premises issuing them with a warning for carrying out unauthorised licensable activities.

This premises fell within the Licensing Authority's Cumulative Impact Area (CIZ), which was adopted to give greater power to control the number of licensed premises within the city's centre. The SPCI was introduced because the Licensing Authority determined that the concentration of licensed premises and the subsequent numbers of people drawn into the city centre was causing exceptional problems of crime and disorder and public nuisance.

The effect of the SPCI was that applications for new premises licences, which were likely to add to the existing Cumulative Impact, would be refused following relevant representations. The applicant could rebut this presumption of refusal if they could show that their application would have no negative cumulative impact on licensing objectives, including prevention of crime and disorder and public nuisance.

In regard to the Matrix policy, the Licensing Officer could not see any offered exceptional circumstances for departing from the Matrix policy. The Licensing Team

contended that the Matrix policy related to both new and variation applications. Again, the Matrix policy could be departed from where exceptional circumstances were demonstrated, but the applicant had failed to address this.

As well as being located in the CIZ, the premises was situated in the electoral ward of Regency, which according to the Public Health Framework for Assessing Alcohol Licensing 2019 also included 'crime and disorder data', within this ward. Regency was ranked (out of 21 wards) worst for 'all violence against the person', 'all injury violence', 'non-injury assault', 'sexual offences', and second worst 'police recorded alcohol related incidents'.

The Licensing Team had made this representation to uphold the Statement of Licensing Policy. The SPCI was predicated on too much alcohol being available and, as previously stated, applications for new premises licence would be refused unless the applicant could demonstrate exceptional circumstances to justify departing from the Policy. This application remained to be contrary to policy and the Licensing Officer therefore invited that this application be refused in line with the Statement of Licensing Policy and the Matrix approach.

- 3.5 In response to a question from the Panel, the Licensing Officer confirmed she had not received any conditions from the applicant which demonstrated "exception circumstances".

Sussex Police

- 3.6 PC Staplehurst presented the objection from Sussex Police. She referenced the CIZ and confirmed that applications for a new premises license in this area, which would likely add to the existing cumulative impact, would be refused following relevant representation but this could be refuted by the applicant if they were able to demonstrate their application would have no negative impact. The Police did not feel the Applicant had offered anything to persuade them to depart from the policy regarding off-sales, and the Applicant had not made any reference to the cumulative impact.

PC Staplehurst repeated the crime data already presented to the Panel by the Licensing Authority.

PC Staplehurst believed the new premises would impact on the area by increasing anti-social behaviour. The addition of chilled off-sale products would also increase risk of under 18s being able to drink via proxy sales. No conditions were offered regarding off-sales.

Sussex Police also had concerns regarding the delivery of alcohol particularly in relation to Challenge 25 checks and that no alcohol was being sold to already intoxicated persons, as no delivery conditions had been offered.

With regard to off-sales, it was unclear if consideration had been given to the parking of delivery vehicles.

The Applicant had offered minimum conditions regarding the operation of the premises including a refusals log, Challenge 25 or signage.

It was reported to Police Licensing that three females were witnessed consuming alcohol on the premises on 13th December 2021. On 14th December 2021 Police Licensing visited the premises and alcohol was seen in the chiller cabinet. A member of staff confirmed that alcohol sales had taken place as recently as that morning. A breach letter was sent to the Applicant. No response to this was received.

PC Staplehurst was concerned that the Applicant had limited understanding of the Licensing Act 2003 and felt the premises would likely cause issues should the licence be granted.

Sussex Police was unable to support this application and PC Staplehurst asked the Panel to consider refusing it.

Applicant

- 3.7 Mr Seebundhun understood the breach and apologised for the miscommunication. It was his understanding that a reply had been sent to the police explaining the action they would take to address the breach.

Mr Seebundhun explained that the Flower Burger concept was about protecting people and the environment. Alcohol was a minimal impact on the business and the alcohol they would sell included beer (5.1%), prosecco (11%) and gin and tonic in cans (5%).

He conceded that he had not looked at the Statement of Licensing Police before submitting the application. His reason for this was that he worked with airports both airside and landside. He understood Challenge 25, serving food with alcohol, refusals log, etc. but he did not take the opportunity to research the location of the premises. Since they had removed all the alcohol from the premises, they had reviewed what they wanted to do. They wanted to serve alcohol with a substantial meal and use the Statement of Licensing Policy to train staff.

They had started on the wrong foot and would like to rectify this.

- 3.8 In response to a question from the Panel, Mr Seebundhun said when they received the breach letter from the Police, he spoke to the Store Manager and asked him to make sure that all correspondence was replied to. He assumed that this had been done.
- 3.9 In response to a question from the Panel, Mr Seebundhun confirmed he was aware of the letter sent to them on 2nd December 2021 advising they were not authorised to sell alcohol. He went to the store and told everyone that alcohol should not be sold from the premises until the licence was granted. The alcohol was in the fridge because they were recording a video to show what Flower Burger looked like.
- 3.10 The Panel asked if Mr Seebundhun had considered offering additional conditions in writing before the hearing. He explained his understanding was that he could submit conditions verbally at today's hearing. He planned to submit in writing after the hearing.
- 3.11 The Panel asked Mr Seebundhun why they should make an exception for this application. He explained he had read everything about the CIZ and taken action to

make sure they only served food with alcohol and did not allow people to take drinks outside. He would look at sourcing an external company to train staff within a week of them starting. They planned to apply Challenge 25, and they would join the organisation which he had seen on the Statement of Licensing Policy.

- 3.12 Mr Seebundhun was asked by the Panel why he did not talk to the council or Police Licensing before submitting the application. Mr Seebundhun said when they recruited the team in Brighton, the manager was experienced and he believed they understood the licensing process.
- 3.13 Mr Seebundhun confirmed they would not be offering deliveries of alcohol, just food.
- 3.14 The Panel noted that the steps they would take to promote the Licensing Objectives were not contained within their application. Mr Seebundhun said the team would understand what was required to sell alcohol, they would work closely with the Police and undertake monthly meetings with them. If necessary they would invite the Police to team meetings.
- 3.15 PC Staplehurst noted that Mr Seebundhun was down as the DPS. She asked how he would do this if he was not local. He said he thought this was best practice. The management team were all fully licensed.

Closing Submissions

- 3.16 Each of the parties were given the opportunity to make their closing submissions and each reiterated the points they had made during the meeting. The Panel then retired to make their decision which is set out below.

Decision

- 3.16 That the Premises Licence in respect of Flower Burger, 62 North Street, Brighton, BN1 1RH, be refused.

Reasons

- 3.17 The Panel has read all the papers including the report and relevant representations and listened to all the submissions made today.

This is an application for a new premises licence within the Cumulative Impact Zone (CIZ) and therefore subject to the special policy on cumulative impact as set out in the Statement of Licensing Policy.

Our policy states that applications for new premises licences will be refused following relevant representations unless the applicant has demonstrated that their application will have no negative cumulative impact. The special policy will only be overridden in exceptional circumstances.

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 application is for a ground floor vegan restaurant to eat in or takeaway with alcohol for sale on and off the premises from 11:00 to 22:30 every day.

Two representations were received from Sussex Police and the Licensing authority. The representations had concerns regarding the prevention of crime and disorder, public nuisance and cumulative impact. It was pointed out that no relevant conditions to promote the licensing objectives had been offered in the application and there was no acknowledgment of the location of the premises in the CIZ. There was also concern expressed about the premises engaging in unauthorised licensable activities namely sale of alcohol without a licence which was witnessed by the police. This happened despite an email from the licensing authority when the application was submitted explaining that no sale of alcohol must take place until a licence had been granted.

The applicants apologised for selling alcohol during the application period. They had looked at the Statement of licensing policy after submitting the application and emphasised that the food was the most important element of their business and alcohol secondary. They did not intend to sell alcohol other than with a meal and not to take away.

The panel has carefully considered this application on its merits and is mindful of the location of the premises in the CIZ which experiences high levels of crime and disorder.

The panel noted that the application itself was unsatisfactory in that no relevant conditions were offered to promote the licensing objectives other than a mention of CCTV. There was no restaurant condition proposed or challenge 25 or other conditions that one would expect to see. No consideration was given to the location of the premises within the CIZ. When questioned about the policy and steps to promote the licensing objectives, the responses given gave the impression that the applicants did not really understand the nature of the licensing regime, the 4 licensing objectives or the importance of conditions and local policy. There was a willingness to withdraw off sales which was positive but otherwise a lack of appreciation of the local context. There has already been a significant transgression which illustrated a failure in management and communication. The panel appreciated that the applicants were sorry about this but again it was an illustration of the lack of understanding on their part of the Licensing Act despite advice given.

The panel could attach conditions but along with the responsible authorities is concerned that they would not be adhered to and that therefore the licensing objectives would be undermined. Overall, the panel do not have confidence in the ability of the management to operate the premises in accordance with the statutory requirements and not add to problems in the area. The application is thus refused.

Note: The Legal Adviser to the Committee confirmed that the decision letter to the applicants would include details of the appeal rights available to them.

The meeting concluded at 10.55am

Signed

Chair

Dated this

day of