

BRIGHTON & HOVE CITY COUNCIL

LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

10.00am 23 OCTOBER 2018

ROOM G90, HOVE TOWN HALL - ROOM G90, HOVE TOWN HALL

MINUTES

Present: Councillor O'Quinn (Chair); Bennett and Marsh

Officers: Sarah Cornell (Licensing Officer); Rebecca Sidell (Lawyer) and Caroline De Marco (Democratic Services Officer).

PART ONE

51 TO APPOINT A CHAIR FOR THE MEETING

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

52 PROCEDURAL BUSINESS

52a Declaration of Substitutes

52.1 Councillor Bennett declared that she was substituting for Councillor Horan.

52b Declarations of Interest

52.2 There were none.

52c 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).

52.3 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of Item 53.

53 NEIGHBOURHOOD, 95 GLOUCESTER ROAD, BRIGHTON, NEW PREMISES LICENCE (LICENSING ACT 2003 FUNCTIONS)

53.1 The Panel considered a report of the Executive Director of Neighbourhoods, Communities & Housing in relation to an application for a New Premises Licence under the Licensing Act for Neighbourhood, 95 Gloucester Road, Brighton. The applicant Laurence Hill was in attendance with his representative Geoff Cooper. Attending to make representations were: Peter Crowhurst, and Marina Ray (local residents), Sandy Crowhurst and Roy Skam (North Laine Community Association) and Councillor Deane (Ward Councillor).

Introduction from the Licensing Officer

53.2 The Licensing Officer highlighted the following:

- This was an application for a new premises licence for a new restaurant at 95 Gloucester Road, Brighton, serving predominantly vegetarian and vegan food and applying for alcohol sales from 11am to 11pm.
- The applicant had removed the 'off sales' part of their application after discussions with Sussex Police and agreement of additional conditions (p59 of agenda).
- As part of the application the applicant had submitted additional information addressing the steps intended to promote the licensing objectives including addressing the Cumulative Impact area and the council's Statement of Licensing Policy. This had been sent to the panel the previous week and the applicant had sent it to the objecting representees.
- 11 Representations against and 16 supporting representations had been received from the local residents, local businesses, a Resident Association and a local Councillor having concerns relating to cumulative impact and the four licensing objectives.
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- The premises was situated in the North Laines in the Cumulative Impact Zone. The Special Policy for Cumulative Impact stated that applications for new licences will be refused following relevant representations. This presumption of refusal could be rebutted by the applicant if they can demonstrate that their application would have no negative cumulative impact on licensing objectives. The Council's Statement of Licensing Policy went on to say that this special policy was not absolute. Upon receipt of a relevant representation, the licensing authority would always consider the circumstances of each case and whether there were exceptional circumstances to justify departing from its special policy. If an application was unlikely to add to the Cumulative Impact of the Area, it may be granted. (2.6.9) It was up to the applicant to demonstrate exceptional circumstances and satisfy the Panel that they won't impact negatively on the CIZ.
- The impact could be expected to be different for premises with different styles and characteristics. For example, while a large nightclub or high capacity public house might add to problems of cumulative impact, a small restaurant, theatre or live music venue (where alcohol is not the primary activity) might be considered exceptional circumstances.
- The Panel would also be aware of the Matrix approach to licensing decisions found within the Statement of Licensing Policy and Page 11 of the Agenda. This included a table with provisions for a terminal hour for licensed activities for all classes of licence premises in a particular area, recognising the diverse operations and different risks presented by those premises although it is up to the panel to look at this application on its own merits.

Questions to the Licensing Officer

53.3 The Licensing Officer confirmed the following:

- The conditions set out on pages 59 & 60 were all agreed with Sussex Police. The Licensing Team had decided not to submit a representation and had reviewed the suggested conditions.
- In relation to a query regarding the serving of alcohol and food, it was confirmed that Condition 1 of the proposed conditions agreed with the police, stated that alcohol should only be supplied to people taking table meals as ancillary to their meals and that there should be no vertical drinking. The premises would operate as a restaurant with alcohol served all day.
- The Licensing Officer believed that the Licensing Team had been consulted about the application. She confirmed that the agreed conditions were recognised conditions and were in line with the Statement of Licensing Policy.
- It was pointed out that the enclosed terrace (Appendix B) was not a covered terrace and had a wall. A bold line shown on the map on page 61 had not included the terrace. The Licensing Officer apologised and stated that the map should have included the terrace.

Representations

53.4 Peter Crowhurst addressed the Panel and stated the following:

- The Panel were asked to reject the application as residents believed that an alcohol licence would add to the noise and disturbance in the area and would add to cumulative impact. The Panel had to decide to follow the Matrix or implement the Statement of Licensing Policy with regard to cumulative impact and allow people to live peacefully in their homes.
- The North Laine was essentially a residential area and the premises lay in Kensington Place. Kensington Place had a number of historic cottages and 18 grade 2 listed houses. There were a number of surrounding residential streets and even Gloucester Road had residents living above premises. The premises in question had a lady with a child living above.
- Although marketed as a shopping area, the North Laine was a residential Conservation Area which was saturated with licenced premises. There were around 74 such premises, 12 of which were within 100 metres of the premises.
- The area was extremely challenging and the police had described it as "A crime and disorder hotspot". Since deregulation of licensing, the area had suffered from noise and disturbance and anti-social behaviour. Mr Crowhurst had no doubt that the increase in licensed premises had led to an increase in crime and disorder.
- The premises was in the electoral ward of St Peters and North Laine. This was the worst ward out of 21 for crime and disorder, anti-social behaviour and public nuisance.
- The Government's Alcohol Strategy acknowledged a connection between the number of licensed premises in an area and the level of harm (paragraph 3.9).
- The applicant in his submission did not accept that current issues with noise and other problems in the area could be related to his application. Mr Crowhurst

stressed that residents were affected by the impact of dispersal. Every single additional licence contributed to the overall level of crime, noise and disturbance.

- The applicant stated that the application was modest. There were 17 similar modest premises in the North Laine. They might be small but attracted people who otherwise would not have to come to the North Laine. Modest premises would attract people to go on to nearby pubs. These people could leave the area in the early morning. It was a fact that people were attracted to the area and later moved on and caused problems.
- Concern was expressed with regard to the outside space and pavement space. Voices could be heard by neighbours from 40 yards away.
- Adding a new restaurant was creating a new area for eating and drinking in the middle of a residential area.
- Mr Crowhurst quoted paragraph 3.1.7 of the council's Statement of Licencing Policy which stated that the fact that a premises would be exceptionally well managed with a well-qualified applicant, would not be considered exceptional.
- To grant the licence there would be a need to demonstrate exceptional circumstances and no negative impact.
- Residents in North Laine should be able to enjoy the peace that any other resident could enjoy. The Panel were asked to support local residents and consider the cumulative impact implications and refuse the application.

53.5 Mr Crowhurst confirmed that there had previously been a traditional café at the premises. A family lived above the premises.

53.6 Mr Skam addressed the Panel and stated the following:

- Mr Skam concurred with the comments made by Mr Crowhurst.
- Mr Skam had a number of concerns about the application, particularly in relation to the outside areas. There was more seating outside (36) than inside (20).

53.7 Ms Ray addressed the Panel as follows:

- Ms Ray's concern related to the pavement area which was blocked off by a pedestrian section. If outside tables were allowed it would become a section of pedestrian eating and drinking. The area was a magnet for outside eating and drinking and there was a risk this section would become like Sydney Street where people could hardly get past tables and chairs. It would turn Gloucester Road into a great corridor of noisy eating and drinking.
- Ms Ray stressed that if people were allowed to eat and drink to 11pm, they would not leave tables until 11.30pm and there would be a clear up to midnight.
- Ms Ray confirmed that 16 people could be seated at the front of the premises. Mr Hill confirmed that the premises was currently open as a basic café called Neighbourhood.

53.8 Councillor Deane addressed the Panel and stated the following:

- The premises was in a residential area with an uninterrupted row of houses in Kensington Place as shown in the photograph on page 33 of the

agenda. The photograph on page 34 showed that the premises building would have once been a residential house.

- Councillor Deane stressed that the area was changing around the residents. Residents provided social fabric in the area. If they moved out then who would move in? If it was a transient population then there would be an increase in anti-social behaviour.
- Although the police had withdrawn their representation, the matters raised by the residents were not a police matter. The concerns were about general noise of customers outside the restaurant.
- Residents were particularly worried about the terrace and outdoor space.
- Councillor Deane appreciated that Mr Hill had a great deal of support and she had no doubt it would be a really nice well run premises. One little restaurant would not make a difference on its own, however when there were over 70 premises in the area the residents would start to see a difference. The North Laine was on the tipping point of what made it a pleasant place to be.

Representation from the Applicant

53.9 Mr Cooper addressed the Panel on behalf of the applicant, Mr Laurence Hill, and made the following points:

- The size and nature of the premises would not add to cumulative impact. There would be a canopy rolled out over the terrace area which would modulate noise. The premises took up a modest area of 35 sq. metres. The proposal was now to have 20 persons inside the premises, 10 on the terrace and 8 outside.
- The outside area on the plan on page 25 of the agenda gave a misleading impression. There would be a strip of 8 tables and chairs which would not cover the pavement.
- The whole approach of the council's Statement of Licensing Policy was about balance. This was a genuinely modest application which would not add to problems in the area.
- The operation was not centred on alcohol. It was a food led operation, which allowed people to have a drink with their meal.
- Mr Cooper hoped to have a discussion about the hours for the outside area and terraced area.
- Before submitting the application, the applicant had consulted with Sussex Police and the Licensing Team. Mr Hill had done everything reasonable with regard to consultation and still wanted to consult.
- The premises would improve matters in the area and provide supervision and surveillance in this corner of the North Laine.
- The applicant considered that a well-run premises would not have negative impact and would improve the area.
- The premises would be well managed and would be a distinct operation based on food.

- The statement of Licensing Policy set restaurants apart and considered them a social space. The applicant did not agree that the crime and disorder in the area would become worse as a result of the application
- Problems with dispersal related to people moving from the seafront who made their way through the town on their way to the station. It was always busy in the North Laine due to that fact.
- The applicant had made a modest licensing application and wanted to offer alcohol, in case customers wanted a bottle of wine in the evening
- The application complied with the Matrix set out on page 11 of the agenda.
- Mr Cooper was happy to discuss hours for the outside space.
- The Licensing Team had not submitted an objection and conditions had been agreed with Sussex Police (pages 59-60 of the agenda).
- The applicant had been in amicable discussions with the residents and would ensure the application would not lead to cumulative impact. The premises would improve the area.
- Mr Cooper requested that the application be granted.

53.10 In response to questions the following was confirmed by the applicants:

- It was confirmed that the restaurant did not have a bar. The premises had a counter and was food led.
- Mr Hill confirmed that he had been the manager of the Fortune of War for the last 10 years and was still manager. Previously he had worked at the Komedia and the Dome.
- The point was made that the Fortune of War was a very different operation on the seafront where there were no residents. The North Laine was a very different experience. Mr Hill was asked why he thought he could run the premises in a heavily residential area. Mr Hill explained that the premises had been his local café. He had lived in the centre of Brighton for 15 years, and his sister ran a shop and lived nearby. Many of Mr Hill's friends lived in this immediate area. He was taking on the café as he was fed up with the noise of the Fortune of War. He felt that he had the experience of running premises and knew the area and its concerns.
- It was pointed out that only two of the 16 supporting representations lived in close proximity to the premises. Mr Hill was asked if the Fortune of War had received any complaints. Mr Hill confirmed that there had been no complaints. The Fortune of War was a well-run, friendly, civilised place.
- It was pointed out that there was a major concern about the outside area. There had been a suggestion that the applicants might offer a compromise. Was this a reduction in hours? Mr Hill replied that many pubs took in tables and chairs at 10.00pm. He was offering that change to the hours.
- Mr Hill confirmed that he proposed to serve a limited range of alcoholic drinks. This would focus on local beers and organic wines. There would be no cocktails.
- It was pointed out that the proposal was to serve alcohol from 11.00am. Would Mr Hill be prepared to restrict the hours for the sale of alcohol? Mr Hill stressed that to run successfully as a restaurant the main business was carried out in the evening up to 10.00pm. Lunchtime trade started at 12 noon.
- Mr Cooper confirmed that the applicant was offering to provide alcohol from 12.00noon to 10.00pm.

- It was pointed out that the residents would say that 10.00pm was too late for the outside area to be in use. Mr Cooper suggested 7.30pm as the terminal hour for the outside area.
- At this point Mr Crowhurst objected to the way the meeting was proceeding with the negotiation of conditions. This appeared to be to be trying to find a compromise rather than consider the concerns of the residents. Panel members stressed that they had noted that the residents were worried about noise in the evening. The noise would come from the outside. If the café was allowed to operate inside it would be a modest application. The Panel was very much listening to residents and had to respect the matrix and act proportionally.
- Mr Crowhurst stated that residents were asking the panel to consider Cumulative Impact which would override the Matrix. Panel members stressed that the Statement of Licensing Policy included exceptional circumstances. The policy was not absolute. The Panel had to act in a reasonable and proportionate manner. They were not prejudging the application. They were trying to canvas while everyone was in the room. The Panel would debate the application and make a decision in private session.
- Mr Cooper stated that he was happy to be canvassed and for there to be a discussion.
- The applicant was asked about a smoking area. Mr Hill replied that the nature of the restaurant would be quite health conscience. There would be no smoking inside and smoking outside was generally permissive.
- The Licensing Officer suggested that the terraced area could be used as a smoking area. Numbers of smokers could be limited after 7.30pm.
- Ms Ray expressed concern that people going outside to smoke might take a drink with them. It was pointed out that taking drinks outside was not normally permitted.
- Mr Cooper confirmed that the applicant had a table and chairs licence for the outside area.
- Mr Hill was asked about the storage of bins. He confirmed that black bags were taken to the communal bins.
- Mr Skam asked if it was true that there was no toilet in the premises. Mr Hill replied that the premises was currently operating as a take away. He was in conversation with Environmental Health about the facilities. The Panel Lawyer confirmed that the applicant would have to abide with legislation. The Licensing Officer stressed that the provision of a toilet would not be covered by licensing legislation. Mr Cooper confirmed that his applicant wanted to see if he could obtain a licence. The toilet and other matters would be complied with in due course.
- Mr Hill was asked to discuss his menu. He confirmed that the restaurant would provide hot meals. It would be a vegan/vegetarian casual dining restaurant. There would be large and small plates with vegetable based food. Some meals would be hot. This would be the same in the day. The evening would have the menu of the day. The premises would be a combination of a café and restaurant. Coffee would be a big part of the operation during the day and food would be provided at all times.
- The Licensing Officer pointed out that the premises would not be allowed to serve a glass of wine with a croissant. It would need to be served with a substantial meal.
- Mr Hill was asked if he agreed that there were concerns regarding noise from the domestic property above. He replied that the person living above was a friend and he agreed that there were concerns.

- Mr Hill was asked if soundproofing would be implemented. He replied that he would be prepared to put in more soundproofing.
- Mr Hill confirmed that he was now asking for 8 people to use the outside area and 10 people in the terraced area.

Summaries

53.11 The Licensing Officer gave the following summary:

53.12 This was an application for a new premises licence for a new restaurant at 95 Gloucester Road, Brighton, serving predominantly food and applying for alcohol sales from 11am to 11pm which had been amended following discussions during the hearing to 12noon to 10pm.

53.13 The Panel had heard from the applicant why they believed this application should be granted and had heard from the representations some of whom were asking the Panel to consider refusing the application and at least have regards to the licensing objectives and cumulative impact particularly relating to the outside area.

53.14 Licensing Guidance stated 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 necessary to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- the Guidance;
- its own statement of licensing policy

53.15 The question for the Panel was, had the applicant demonstrated that their application would have no negative impact or whether there were exceptional circumstances to justify departing from its special policy

53.16 If the applicant had demonstrated that it won't impact then the Panel should consider granting the application, and any conditions to meet Licensing Objectives and to control cumulative impact should be clear, precise and enforceable.

53.17 If the panel believed the application would add to the existing cumulative Impact and the applicant had failed to demonstrate how they would counteract that negative impact then the Panel should consider refusal. If the Panel decided to refuse the licence, it would need to demonstrate that granting would undermine a licensing objective and conditions would be ineffective in preventing problems.

53.18 Mr Skam stated that he had been under the impression that the application was for a restaurant but he was now hearing it was for a café/restaurant. He considered it a weak application for a very small café. There was no public toilet and the premises had a small kitchen and no hot food. There was domestic accommodation above the premises with one small child. There was concern about the outside areas to the front and side. The restaurant opposite had to take in tables and chairs by 7.30pm. The premises

would be serving vegetarian and vegan food and would find it hard to compete with other restaurants in the city.

53.19 Mr Crowhurst stated that he had no doubt that the applicant was well qualified. He considered that the applicant was the right person in the wrong location. Mr Crowhurst's objection was not about the Matrix, it was about cumulative impact. This was a modest application and modest premises, however there were numerous other modest premises in the North Laine. The applicant did not understand the definition of cumulative impact. Every addition to the premises would have cumulative impact. This was an addition. The Statement of Licensing Policy stated that any premises that was likely to add to cumulative impact would be refused unless the applicant could demonstrate that there would be no negative impact. The applicant had not done this. The application would add to Cumulative Impact. Mr Crowhurst asked the Panel to adhere to the policy on cumulative impact and not grant the licence.

53.20 Ms Ray stated that cumulative impact would increase if tables and chairs were permitted outside the premises, after La Choza (opposite) had removed their outside tables and chairs. Outside tables and Chairs to 10.00pm would be a big increase in cumulative impact.

53.21 Councillor Deane concurred with residents. This was an area where people would like peace and quiet at night. She asked the panel to bear this in mind.

53.22 Mr Cooper stated that the application was modest and would not cause any problems. The premises would be well run and he asked the Panel to grant the licence.

53.23 **RESOLVED** – The Panel's decision was as follows:

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. The application is for a small restaurant with some outside space.

Our policy states that applications for new premises licences will be refused following relevant representations. This presumption can be rebutted by the applicant if they can show 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 and both the policy and matrix approach indicate that a small restaurant may be unlikely to add to cumulative impact in the area and therefore may be exceptional.

The representations from the residents, local councillor and community association express concerns about the residential nature of the area and the saturation of licensed premises within it and have concerns about cumulative impact and disturbance to nearby residents especially from the outside areas. The applicants point to the modest nature of the application and their pre-consultation with responsible authorities and conditions they have agreed with the police.

The panel has considered very carefully the concerns of local residents and recognise the sensitivities of this residential area. In discussions with the applicants they were willing to

reduce the times for sale of alcohol to start at midday until 22:00 hours in the evening. The capacity of the outside areas was clarified and it would be restricted to 8 persons on the outside pavement area at the side and 10 persons in the front terrace area. There would be capacity for 20 persons inside the premises. Earlier closing times for the outside areas were canvassed by the panel. The applicants were willing to be flexible with times for the outside areas.

The panel recognise the real concerns of the residents in this area but consider that a more limited evening operation, with restrictions on the outside areas, and further conditions will mean that these premises would be unlikely to add to cumulative impact. The small scale and style of the operation is one recognised in our policy as being exceptional and we recognise that the applicants pre-consulted with responsible authorities. We would urge the applicant to continue an open and constructive dialogue with local residents.

The panel has therefore decided to grant this application with the following additional conditions which will promote the licensing objectives.

1. Sale of alcohol will be from midday to 22:00 hours every day.
2. The number of customers in the outside front terrace area will be restricted to a maximum of 10 at any one time and the number of customers in the outside pavement area to the side will be restricted to a maximum of 8 at any one time.
3. All service to the outside areas will cease at 19:30 hours, and the areas will be cleared of customers by 20:00 hours. Anything in these areas which has to be cleared and put away must be done by 20:30 hours. This is to avoid disturbance to nearby residents.
4. After 19.30 hours every day the number of smokers will be limited to 2 in each of the outside areas at any one time. Customers will not be permitted to take drinks with them into the outside smoking areas.
5. There will be signs displayed on the premises asking customers to be considerate to local residents and keep noise to a minimum when leaving the premises.

The meeting concluded at 12.15pm

Signed

Chair

Dated this

day of