

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

10.00am 15 MARCH 2019

ROOM G90, HOVE TOWN HALL

MINUTES

Present: Councillors: O'Quinn, Knight & Deane

Officers: Rebecca Siddell, Legal Advisor, Jim Whitelegg, Licensing Officer, Mark Thorogood, Police Licensing Officer, Donna Lynsdale, Licensing Authority Officer, Kat Hoare Democratic Services Officer – Lower.

PART ONE

80 TO APPOINT A CHAIR FOR THE MEETING

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

81 PROCEDURAL BUSINESS

81a Declaration of Substitutes

There were none.

81b Declarations of Interest

There were none.

81c 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.

81.3 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of Item 82.

82 TWISTED LEMON LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

82.1 The Chair introduced the Panel

82.2 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 Twisted Lemon.

Introduction from Licensing Officer

82.3 The Licensing Officer Jim Whitelegg stated the following:

“The application is for the variation of the premises licence for Twisted Lemon, 41 Middle Street, Brighton. The applicant wishes to:-

- Remove the “restaurant condition” restricting the supply and sale of alcohol on the premises to persons taking table meals there and for the consumption by such persons as ancillary to their meals.
- And in addition remove 2 embedded conditions (drinking up time 30mins after permitted hours and recorded music under the previous 1964 Act)
- The application also requests “The removal of an extension of permitted hours for licensable activities on New Year’s Eve”

The applicant has proposed a number of conditions, detailed on an operating schedule to promote the licensing objectives. These proposed conditions appear in Append A page 23 of the agenda. In addition the applicant submitted supplementary info containing a WS from the PLH/applicant, further potential conditions, list of awards , photos and letters of support. This was emailed to the relevant parties on the 11th March.

The Council’s Licensing Team and the Police Licensing Team have both made a representation (which appear on Pages 33 and 37 of the agenda) as they have concerns that the application could have a negative impact on the licensing objectives of prevention of crime and disorder and public nuisance. The representations also make reference to the Special Policy on Cumulative Impact contained within the Council’s Statement of Licensing Policy.

The premises is situated in the city centre in the heart of CIZ. The Special Policy for CI states that applications for variations which are likely to add to the existing cumulative impact will be refused following relevant representations. This presumption of refusal can be rebutted by the applicant if they can show that their application will have no negative cumulative impact on licensing objectives.

This special 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. If an application is unlikely to add to the Cumulative Impact of the Area, it may be granted. (2.6.9)

The Panel will also be aware of the Matrix approach to licensing decisions found within the SoLP and Page 11 of the Agenda. This includes a table with provisions for a terminal hour for licensed activities for all classes of license premises in a particular area, recognising the diverse operations and different risks presented those premises.

Can I remind the Panel that each application is still considered on its own merits and there is discretion to depart from the policy where justified.”

Questions to the Licensing Officer

- 82.4 The Chair asked the Licensing Officer to clarify the 30 minute drink- up time within the hours applied for by the applicant and asked whether the applicant wanted people to drink right up until the closing time limit? The Licensing Officer replied that within the previous Licensing Act, the closing hours were often the same as the permissible drinking time. He added that the applicant was requesting a termination at midnight and therefore was not seeking any change in opening hours. The Licensing Officer stated that the Licensing Team tried to keep focussed on the existing conditions of the licence.
- 82.5 The Chair then asked for clarification regarding the supply of alcohol which, and whether, if this granted until midnight, did this also include a half hour period of drinking-up time after that? Mr Holland – the applicant’s solicitor replied that the current licence did not specify any opening hours and that therefore it could be possible to drink all night, but that at the request of the police it was necessary to specify the opening hours so therefore there was now a codified condition. He confirmed it was a 64 Application – which was complicated and required modernisation. The Chair then asked when the original licence was granted and the Licensing Officer replied that there was not an exact date, but that it pre-dated the Licensing Act.

Representations from Responsible Authorities

Police Licensing Officer

- 82.6 The Police Licensing Officer Mark Thorogood addressed the panel and stated the following:

“As mentioned, this is an application to vary an existing premises licence located at 41 Middle Street, Brighton.

The reason for our representation is in regards to the removal of restaurant conditions and as such, altering the style of the business from a restaurant to a bar within the Cumulative Impact Area as set out within the Brighton & Hove City Council Statement of Licensing Policy. Under the matrix within the same policy, this type of premises is not supported though as we know, the policy can be overridden but only in exceptional circumstances.

In terms of the location, Middle Street and the surrounding areas are in the heart of the night time economy with a high number of bars, restaurants and off licenses. It also falls within the Operation Marble area, Sussex Police response to policing the night time economy here in Brighton & Hove.

Section 3.1.2 of the Brighton & Hove Statement of Licensing Policy states:

The licensing authority, after careful consideration, has determined that the concentration of licensed premises in an area of the city is causing problems of crime and disorder and public nuisance, and that therefore an approach to “Cumulative Impact” is necessary as part of its statement of licensing policy.

In support of this, during a 12 month period from February 2018, Middle Street and the surrounding areas of West, Duke and Ship Street had seen just over 340 incidents reported to police. 65% of these have been recorded as violence against the person with a high percentage of incidents having a drink/drug element to them. Other incidents include sexual assaults, robbery, drug related offences as well as criminal damage. After West Street, Middle Street was the second highest in relation to number of offences closely followed by Ship Street. My data shows that individuals under the influence of alcohol and or drugs are committing crimes in this area which is linked to the amount of surrounding pubs, bars and clubs and the availability of alcohol. This is further evidenced within the Public Health Framework report 5th Edition, Jan 2019. This premises falls within the Regency ward, which is ranked 2nd highest for police recorded alcohol related incidents.

The applicant is requesting the removal of the restaurant condition however, it's evident that for a number of years now, the premises has been in breach of its licence on a number of occasions by operating as a cocktail bar rather than a restaurant.

During a period that covers end of 2013 and early part of 2014, a number of visits were conducted where breaches were witnessed. Also the premises tried to work around the licence by offering free tapas style food which included on one visit, small plates of olives being handed around to patrons. Meetings had been held with the owners in both November and December 2013 to try and address the issues and concluded with them confirming a variation would be submitted though this was not forthcoming.

A visit on 12th Dec 2014 by licensing concluded that although persons had remnants of tapas and a pizza was being cooked, the officer did not believe the premises was still being run to the true spirit of the licence. The PC's reasoning is that people are going to the premises for cocktails rather than a sit down meal and food was being "forced" upon them be that free or at reduced cost.

We then fast forward to 10th Dec 2018 when myself with Council licensing team conducted a visit and upon arrival, on asking the member of staff behind the counter if food was required with a cocktail order, the response was no. Within the applicants bundle of documents which has been submitted this week, they confirm that the premises has not been operating in the style it should be and in attempts to do so, been providing tapas style food and at a later date, pizzas, often complementary which we don't believe shows adherence to the licence. Point 43 states, "*Our attempts to comply with the restaurant condition seemed to serve little purpose*". Even now the premises website is still very much focused on advertising as a cocktail bar. They mention restaurant and pizza once where the rest of the text is promoting cocktails including all the imagery – apart from one image of a slice of cake.

Section 3.1.7 of the Statement of Licensing Policy states within it that:
The fact that a premises will be/is exceptionally well managed with a well-qualified applicant, or that there are no residential premises nearby, will not be considered exceptional.

It's fair to say that the premises itself in relation to incidents is not on our radar however, considering the breaches, Sussex Police feels this raises questions over the managements understanding and wish to adhere to licence conditions.

Along with the crime data I gave earlier, our other main concern is regrading "pre loading". The premises is not a late night venue and for this reason, we feel it's fair to say it's possibly a pre night out drinks venue. Police believe that for a number of customers, especially at the weekends, the night does not end here. They are highly likely to move on to other venues. Though its evidenced that the venue has been operating as a bar, we could argue that by removing the restaurant condition, this would not cause any further negative impact as they have been doing it anyway – Sussex Police would argue though, should the premises operate as it should on its current licence, by consuming food, persons would leave their venue less intoxicated so would have a positive effect on the surrounding area. With the venue currently being run as a cocktail bar, I could be wrong but I'm in the belief that these type of drinks have a higher alcohol content to your standard gin and tonics and pints.

Though we do not support this variation, to assist in mitigating risk, we have worked with the applicant and their agent on a number of conditions should the variation be granted. It is very clear to us after reading their submissions, over time food at the venue has dropped off, chefs have left, menus been greatly reduced and at times just tapas style food being offered, often complementary. One of the conditions being offered is that substantial food will be available. We are unsure on how this will work based on their own admissions on the sustainability of this.

Sussex Police raised our representation against this application as we felt strongly that it should be brought before this panel today to be fully scrutinised. We are clear in that we are unable to support such an application based on our concerns raised over the crime and disorder in the locality, issues with pre loading of alcohol and the negative impact all this can have on an area. Along with the recommendations within the Statement of Licensing Policy, we ask the panel to refuse this variation application."

Questions to the Police Licensing Officer

- 82.7 The Chair stated that the premises was situated in the middle of the CIZ and that it was interesting that Middle St was the street with the second highest number of incidents reported. She asked if it was possible to tell where people had come from within the area, including victims of crime? – She confirmed she had heard reports of many young women who had drunk too much and also those who were vulnerable to sexual assault and crime in the area. The Police Licensing Officer replied that there was evidence of people pre-loading alcohol in the area. He confirmed that the premises was not a late night venue but that at weekends customers might start drinking at the venue and then go on elsewhere.
82. 8 The Chair then stated that she had looked at the Facebook menu and was concerned about the lack of food offered at the premises, since it offered mainly cocktails which young people drank to become inebriated. The Police Licensing Officer confirmed that this was true and that there was a long happy hour.
- 82.9 Councillor Deane asked about the visit by police to the premises in November and whether they had made the applicant aware of the licence breach at that time. The

Police Licensing Officer replied that on 12 December 2014 at 22.45 PCs Harth and Jean Irving had visited the premises. He also confirmed that he had visited the premises himself in 2018 and had seen remnants of food and pizza at the premises but he felt that both visits had confirmed that food was just being sold to adhere to the licence and that the venue was being run as a cocktail bar.

- 82.10 Councillor Deane asked about the 9 hour happy hour and whether this contributed to pre-loading in the area and whether there was evidence of a particular gender in this venue. The Police Licensing Officer replied that it did contribute to pre-loading since people would continue on to other cheaper venues after starting at this one, and whilst there was no evidence of any particular gender involved, there were just general incidents.
- 82.11 The Chair asked if there was any waitress service at the venue and the Police Licensing Officer replied that she should ask the Applicant about this, since when he visited with his colleague in December, he was served at the bar.
- 82.12 Mr Holland queried the term: pre-loading, which he interpreted to mean that people bought alcohol from off licences and drank at home before going out to venues, but had not heard the phrase used in this context. The Police Licensing Officer replied that the term was used in a similar way for customers buying cheaper drinks from one venue and then going on to several other venues and that in the Brighton area, there were a high number of incidents relating to this, even though this premises was not regarded as a problem by police. Mr Holland stated that the premises was a small venue with customers who were knowledgeable about these matters and that they would be surprised at the description of clients pre-loading. Mr Holland also stated that the happy hour from noon – 9 pm sold double cocktails for £ 5.95 which then increased to £8.95 from 9pm which was £4.75 per unit of alcohol from 9pm – midnight and he queried whether that was a particularly cheap price for the Brighton area. The Police Licensing Officer said that offering pints of draught alcohol was a cheaper option and Councillor Deane stated that she had seen the venue described as “drinkanomical” on the Brighton cocktail website with £3 drinks. Mr Holland suggested that the venue was not cheap compared to other feeder bars which offered drinks at £5 per pint and asked the Panel whether if the applicant offered a minimum pricing condition, that this might assist the on this issue. The Police Licensing Officer replied that they did offer £3.50 for a pint of lager which was regarded as a cheap drink and that any conditions needed to be enforceable and relevant. He stated that adding additional conditions to the statutory conditions, may muddy the waters on the licence. Mr Holland cited Newcastle City’s policy on conditions and asked that if £3.50 per pint was too low could the Panel agree on a minimum cost to assist the police’s concern. The Police Licensing Officer replied that the police had put in their representation for this venue, since they did not want another bar in the area which may jeopardise the health and safety of the area and that had agreed to work on conditions in order to mitigate this risk. Mr Holland asked again whether a minimum pricing condition might give comfort to the police for this application and the Police Licensing Officer replied that any added condition may be of assistance.

Representation from the Licensing Authority Officer

82.13 The Licensing Authority Officer Donna Lynsdale addressed the Panel and stated the following:

“You have seen my representation against the application for a variation to existing premises licence.

This representation is made as the Licensing Team have concerns that the application could have a negative impact on the licensing objectives of prevention of crime and disorder and public nuisance.

On 10 December 2018, my colleague Mark Thorogood from Sussex Police Licensing and myself conducted a visit to the premises of Twisted Lemon. At the time of my visit, I carried out a full licensing inspection, which resulted in a Breach of Conditions warning letter sent.

I also refer to the Special Policy on Cumulative Impact (SPCI) contained within the Council’s Statement of Licensing Policy (SoLP).

This premises falls 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 SoLP was introduced because the Licensing Authority determined that the concentration of licensed premises and the subsequent numbers of people drawn into the city centre is causing exceptional problems of crime and disorder and public nuisance. The effect of the SoLP is that applications for variation of existing premises licences should normally be refused following relevant representations. The applicant can rebut this presumption of refusal if they can show that their application will have no negative cumulative impact on licensing objectives, including prevention of crime and disorder and public nuisance.

Where specific policies apply in the area (for example, Cumulative Impact Zone (CIZ)), applicants are also expected to demonstrate an understanding of how the policy impacts on their application, any measures they will take to mitigate the impact, and why they consider the application should be an exception to the policy. On looking at the application form, it seems to me that despite the applicant putting in some measures they still have not demonstrated a potential exception to our policy.

The Licensing Authority will always consider the circumstances of each case and whether there are exceptional circumstances to justify departing from its SoLP.

The Licensing Team make this representation to uphold our Statement of Licensing Policy. The Policy is predicated on too much alcohol being available and, as previously stated, applications for variation of premises licences will be refused unless the

applicant can demonstrate exceptional circumstances. The onus is on the applicant to demonstrate this and we would invite them to explain their exceptional circumstance to the Panel, so that the Panel can decide whether they are satisfied that, this application will not impact negatively on the CIZ.”

Questions to the Licensing Authority Officer

82.14 The Chair stated that the Licensing Authority Officer had found that the premises was not abiding by their terms of the food offer, during their visit in December 2018 and she enquired whether this was an exceptional instance. The Licensing Authority Officer replied that this licence was a restaurant licence and was being breached at the time of their visit and therefore it was worrying that the applicant had run the premises against the policy for such a long time.

Applicant

82.15 Mr Holland represented the Applicant Mr Martin Friel and Mr Williams who was also involved in the venue and gave a presentation about his client's business stating the following main points:

- His client Mr Friel would have liked to have made this application several years ago to remove the restaurant condition from the licence and regrets that this was not done earlier and was not hiding this fact.
- The premises had been trading for several years in compliance with the regulated scheme and it had opened in 2011 as a burgers, ribs and cocktails venue. Clients had voted with their feet and wallets and thus it had changed to trading as a cocktail bar.
- He did not agree that by giving away food, this was regarded as non-compliance with the conditions, since there was no condition that stated that table food had to be paid for.
- He highlighted that from a legal point of view, the current situation required rectification, however this application was for a variation and therefore it should not be about punishing the Licensing Holder since no party had applied for the review and there was no threat of prosecution to the way the premises was being run. Between 2014 and 2018 there had been no visits or queries from either Police or Licensing about the premises.
- He confirmed that in order to secure the future running of the premises, the client wished to continue the business with a few minor tweaks, but wanted to continue with compliance with the Licensing Act and conditions.
- He confirmed that if the current licence was not granted the premises could not continue and that this would mean financial calamity for the client, since they could not force people to eat in order to comply with the conditions that were required since the recent police enforcement. He confirmed that the company's income had dropped radically and the premises was now deserted in compared with the happy, well-patronised place it had been in the past. He confirmed that the applicants were the authors of their own misfortune and should have dealt with this matter much earlier.
- He confirmed that Mr Friel had taken legal advice and was told at the time that the condition was a grey area, since there was evidence that it was possible to

serve a drink before and after a meal and that there was a question over what a table meal was. Mr Holland gave an example of many premises that offer tapas – small plates of food and whether this could be regarded as a meal.

- He stated that the condition of offering food which was a condition in 1951 was now completely outdated within current eating habits which included grazing, such as tapas.
- He stated that the premises was a victim of its own success since customers did not want to eat a full sit down meal with their cocktails.
- He cited the 23 letters of support of the business which had been provided to the panel and confirmed that the venue had a loyal following. He stated that 13 were from women and that it was a venue that was safe, women and LGBT-friendly and was somewhere where customers sought a quiet drink away from the crowds of Brighton.
- He confirmed that it was not a venue for pre-loading since it was a hidden venue that people needed to know about in advance and that it was not attractive to customers who wish to go on to clubs until 3 am. He stated that people may go on to eat a second venue, citing The Ivy restaurant, but that clients would not therefore eat two meals in one night.
- He stated that there was no evidence that this variation requested would add to the impact on the Cumulate Impact Zone and that there was no evidence of risk coming from these premises.
- He stated that the premises should be treated as a pub, within the matrix and that therefore the request to change the premises from a restaurant to a pub was not exceptional or particularly difficult.
- He also confirmed that no music licence or live sports broadcasts licences were applied for, since the venue was not to be used for these activities.
- He concluded his summing up by stating five reasons as to why his client's situation was an exception to the rule:
 1. There had been no incidents of crime or nuisance and no prosecutions or querying from Licensing on the venues compliance with the existing licence for four years, since it was an orderly and well-run establishment
 2. The small size and topography of the venue meant that it attracted a small clientele that were mostly seated in the venue and that it did not attract large crowds of people pre-loading and did not encourage vertical drinking.
 3. High quality cocktails were served at the venue and not cut-priced drinks or draft beer that might attract a different pre-loading clientele.
 4. The customer demographic included a women-friendly, older and a diverse group of people and the venue offered a safe haven to its customers, with less than 10 evictions in 7 years of operation which meant that no security were employed since it was not required.
 5. He stated that if the restaurant condition was taken away, the value of the licence would go up since any future owners could trade as a bar. He offered that they had offered a suite of conditions to deal with this and had already met requirements from the responsible authorities on these matters.

Questions to Applicant

- 82.16 The Chair stated that the panel had heard the argument for exception by many applicants, but that in the CIZ this did not hold its weight. She confirmed that the role of

the panel was not to punish the applicant but to work out how a variation would work in practice. She stated that the client had some café conditions required and that the policy had been very firm for café bars within the CIZ. She stated that she was surprised that the venue had been unsuccessful in serving food. The client, Mr Friel replied that there was always food available in the venue but that there was a grey area, where clients carried on drinking in the venue and did not want to eat anything further.

- 82.17 The Chair asked if the venue offered a second sitting and the applicant replied that due to the location it was hard to offer a second sitting. The Chair also queried the advertising of the business which was geared to cocktails and asked what the venue previously had sold. The applicant confirmed that the previous venue Blind Lemon Alley had sold drinks – not cocktails.
- 82.18 The Chair asked how many TENS notices the venue had applied for in the last year and the applicant replied that within the last twelve months, there were two for Valentine's Day and New Year's Eve. The Chair then queried if they had tried to use the TENS notices for 3 days in a row in order to make money whilst adhering to the licence. The applicant replied that they had used the TENS notices to serve cocktails whilst removing the food condition – not in order to stay open later.
- 82.19 The Chair asked why the applicant had not applied for the variation in 2014 and the Applicant replied that after advice from a Solicitor at that time, they had advised that the police has said the application would not be considered and that they had an email to show the date when they had contacted the police on this issue. The Chair then asked if they decided to carry on at this point and the applicant replied that he had spoken to licensing officers including Mr Bateup and found out about the licencing conditions.
- 82.20 Councillor Deane asked why the applicant had not contacted the Council's licensing team at this point, since during their DPS training they would have been familiarised with the policies. The applicant confirmed that they had received the training but had not seen any need to contact the Council. Councillor Deane also asked whether the applicant catered for hen parties since the venue was cited on the Hen Go website. The applicant replied that they had turned away hen parties and also large groups of men.
- 82.21 Councillor Deane queried the timings of when the venue received most customers since she noted it was a successful brand. The applicant replied that from 6pm it was slow to start when people left work and then the busy peak period was from 7 – 10 pm and finally then from 10.30 pm – to midnight , custom would start to slow down.
- 82.22 Councillor Deane stated that the venue had been run as a tea shop in the past and queried whether the applicant had looked into changing its business. The applicant replied that they had already tried to offer customers cream teas but that due to the location it was not possible to make this work financially. Mr Williams then stated that a tea shop would mean starting a completely new business from scratch and added that they had recently taken on new staff but due to the licence had to lose staff who were cocktail waiters.
- 82.23 The Chair queried the information about hen parties on the applicant's webpage since in answer to a question about a party of 30, the answer was that on Saturday the venue did not offer any deals. The applicant replied that they had paid an external person to

run the website and therefore did not have control over it. The Chair stated that this was on the Facebook site.

82.24 The Chair asked where smokers in the venue went to smoke. The applicant replied that there was an area in the alleyway to the rear of the building since the venue was too small to have more than 6 – 10 people outside. The Chair queried that to have a total of 15 people potentially standing was a lot and the applicant stated that they watched the pizza being made at the bar. Mr Holland added that this number would be reduced if the variation was granted. The applicant stated that they would be happy to reduce the number of people standing inside to a total of 6.

82.25 The Chair asked whether the applicant would operate the premises as a bar without food, if the licence variation was not granted. Mr Holland replied that substantial food was on offer and the restaurant condition that customers were obliged to buy food in place and there was no problem in offering this. Mr Friel said that in this instance, it would be most likely to become a pizza or nachos restaurant moving forward.

SUMMARIES

82.26 The Licensing Officer summarised and stated the following:

“I would like to clarify a policy matter highlighted by the applicant. The notes to 3.5.2 relate to the Matrix whereas 3.1.7 relate to the special policy on cumulative impact.

For this variation, the applicant has applied to remove the restaurant condition, essentially change the operation on the licence to a cocktail bar from a restaurant licence, albeit we've heard the premises has been operating as a cocktail bar for some time.

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

The key consideration is the Cumulative Impact policy, predicated on saturated of licensed premises causing issues of crime and disorder and public nuisance. Not necessarily the fault of the operators but just that the sheer number of people being drawn into the city is causing problems.

The question for the Panel is, has the applicant demonstrated that their application will have no negative impact and are there any exceptional circumstances to this application?

If it is unlikely to add to the Cumulative Impact or the applicant has 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.

If the panel believe the application will add to the existing Cumulative Impact and the applicant has failed to demonstrate how they would counteract that negative impact then the Panel should consider refusal. If Panel decides to refuse, it would need to demonstrate that granting would undermine a licensing objective and conditions would be ineffective in preventing problems.”

82.27 The Police Licensing Officer gave the following summary:

“As mentioned in our representation letter and speech, Sussex Police have concerns over this licence becoming a bar licence within the CIZ and the impact on crime and disorder and public safety this could have on the surrounding area. The crime data I have provided today will I hope go some way to confirm and validate our concerns.”

82.28 The Licensing Authority Officer gave the following summary:

“The Licensing Team make this representation to uphold our Statement of Licensing Policy. We ask the Panel to decide whether they are satisfied that this application will not impact negatively on the CIZ.”

82.29 Mr Holland gave the following summary on behalf of the applicant and stated the following points:

“This variation requested was different from a new application since there was good evidence that this premises promotes the existing licensing objectives due to the diversity of customers. Citing paragraph 1.5 regarding recognising the roles of venues in communities and supporting responsible premises.

Although we appreciate that this business is a square peg in a round hole regarding the licensing objectives, it is hoped that we have already made the points to convince the panel that this business is an exception to the policy which could be granted.

It is important to member that no complaint from environmental health and no objections from neighbours have been received about the premises and that 23 different people have given their written support indicating the unusual diversity of customers which includes women, LGBT community and a wide age range, which the venue takes very seriously.”

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

The panel has considered all the papers, including the relevant representations and written submission from the applicants and letters in support, and has listened carefully to all the submissions made today. The application is situated within the cumulative impact zone (CIZ). Our Statement of Licensing Policy (policy) states that applications for variations which are likely to add to the existing cumulative impact 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.

This special policy can only be overridden in exceptional circumstances. However, the policy is not absolute. The panel must consider the individual circumstances and merits

of the application. If an application is unlikely to add to the cumulative impact of the area, it may be granted. The policy at 3.1.7 envisages the type of premises likely to add to cumulative impact such as a large nightclub or high capacity public house while a small restaurant, theatre or live music venue (where alcohol is not the primary activity) may be unlikely to add to problems and thus be an exception to the policy. The fact that a premises is exceptionally well managed with a well-qualified applicant will not be considered exceptional. Further within the policy a matrix approach has been adopted which is favourable to the grant of a restaurant up to midnight in the CIZ and a café until 22:00 hours but not for a pub within the CIZ.

The application primarily seeks to remove the restaurant condition on the licence which requires the sale of alcohol to be ancillary to persons taking a table meal. The premises wishes to trade as a cocktail bar. Representations were received from Sussex Police and the Licensing Authority.

The Police and Licensing Authority raised concerns about cumulative impact and the location of these premises within the CIZ. The potential for pre-loading at the premises before going on to clubs was raised. There were also concerns about the current operation of the premises as a cocktail bar in breach of the restaurant condition.

The barrister representing the applicants, Mr Holland, explained the problems for the premises posed by the restaurant condition and accepted that in recent years they had been operating in breach of that condition and sought now to amend the licence in order to be compliant. He and his clients denied that the premises was a 'feeder', pre club, type of bar arguing that it was a destination venue catering for a different type of market. He pointed to several letters in support of the application by customers many of whom were women for whom it was said the premises provided a safe haven. A suite of conditions are offered.

The Panel has considered the application within the context of our special policy. This premises sits within an extremely challenging part of the CIZ in the heart of the night time economy which is saturated with premises licences and where the police have described the high levels of alcohol related crime and disorder occurring second only to West Street. Furthermore the public health framework ranks Regency Ward as worst or next to worst for the crime and disorder data involving violence.

Mr Holland, Counsel for the applicant argues firstly that the policy is not engaged in this case in that the variation is not likely to add to existing cumulative impact. The panel does not accept this. Changing the style of premises from a restaurant to a cocktail bar is, under the terms of our policy, a substantial and material variation and one which is likely to add to cumulative impact. The onus is thus on the applicant to rebut the presumption of refusal and/or demonstrate exceptional circumstances. Mr Holland has argued a series of exceptional circumstances in relation to the premises which it is held apply and permit departure from the policy.

The panel has fully considered these arguments. The first circumstance is that there is nothing new here in that the premises have been operating as a cocktail bar for some time and so there will be no new or further negative cumulative impact. There are, it is accepted, no incidents of crime and disorder directly linked to the premises. Mr Holland did accept that relying upon illegality as an exceptional circumstance was unattractive

and the panel agree. The essence of cumulative impact and the basis of our policy is that the concentration or saturation of licensed premises in the area are cumulatively undermining the licensing objectives and causing problems of crime and disorder and public nuisance outside or some distance from those premises and thus problems cannot necessarily be attributed to any individual premises. The policy has been in force since 2008. It is thus difficult to say with conviction that the premises has not been contributing to negative cumulative impact for some time by operating in breach of the restaurant condition and that it will not continue to do so if this variation is allowed.

The panel has considered the individual style and operation of these premises, arguments about which broadly form the further categories of exceptional circumstances put forward on behalf of the applicant. It is a relatively small premises down a narrow alleyway. It serves bespoke cocktails and a minimum price condition is offered. It is argued this means it caters for a different demographic; more diverse and less likely to cause problems. The panel notes however that the website focuses almost entirely on alcohol not food and there is a happy hour from midday to 9pm where cheaper cocktails are served. The minimum price condition does not appear to be that restrictive in terms of price and it is clear from online sources that a large range of more cheaply priced cocktails are offered. The panel, in agreement with the police, are concerned about the focus on cocktails which have a high alcohol content without the accompaniment of food. The premises might have a loyal and diverse clientele (which is to be commended) but the location of these premises in the heart of the CIZ and the fact that it will be an almost 100% alcohol led bar as opposed to a restaurant if the licence is varied (and thus the operation legally ratified) means that there is likely to be continued negative contribution to cumulative impact which will not be overcome by the client base. The panel appreciate the arguments on behalf of the applicant that this is not a 'feeder' style bar, but do share the concerns of the police that the operation of happy hours and supply of cocktails without food means that it is likely that some customers will go on to other late night venues.

A set of conditions are offered by the applicants some of which concern seating and substantial food at all times. The panel has considered these but does not believe they will be effective to mitigate the variation sought and prevent problems of cumulative impact. The premises would still be primarily a pub or a bar. The concerns of the Responsible Authorities namely the police and licensing authority also remain in this respect. Furthermore, given the consistent breach of the current restaurant condition the panel cannot be confident that the substantial food condition would be adhered to.

Overall, while the panel appreciates the difficult position the applicants find themselves in, the panel considers that the removal of the restaurant condition will mean that the premises will be almost 100% alcohol led in an already saturated and challenging area and that this is likely to contribute, or continue to contribute to negative cumulative impact and will undermine the licensing objectives in particular the prevention of crime and disorder and prevention of public nuisance. We consider that the applicant has failed to demonstrate that this would not be the case or that there are any exceptional circumstances. The panel therefore refuse this variation application.

The meeting concluded at 1 pm

Signed

Chair

Dated this

day of