

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

10.00am 24 JUNE 2019

ROOM G90, HOVE TOWN HALL

MINUTES

Present: Councillor Appich; O'Quinn and Simson

Officers: Sarah Cornell (Licensing Officer), Liz Woodley (Lawyer), Becky Pratley (Licensing Authority Officer), Gregory Weaver (Democratic Services Officer)

PART ONE

15 TO APPOINT A CHAIR FOR THE MEETING

15.1 Councillor Jacqueline O'Quinn was appointed Chair for the meeting.

16 PROCEDURAL BUSINESS

16a Declaration of Substitutes

16.1 Councillor Carmen Appich declared that she was substituting for Councillor Theresa Fowler.

16b Declarations of Interest

16.2 There were none.

16c Exclusion of the Press and Public

16.3 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).

16.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of Item 17 onwards.

17 ARTIST RESIDENCE LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

17.1 The Panel considered a report of the Executive Director of Neighbourhoods, Communities & Housing in relation to an application for a variation of a Premises Licence under the Licensing Act for Artist Residence, 33-34 Regency Square, Brighton. Present at the hearing were: Dan Kenny, Lucy Bayliss, Justin Salisbury (DPS), Mark Browning (solicitor), Becky Pratley (Licensing Officer), Liz Woodley (Lawyer), Hannah Staplehurst (Sussex Police), Sarah Cornell (Licensing Authority), Mike Davis (Regency Square Society) and Julie Wright (Regency Square Society.)

Introduction from the Licensing Officer

17.2 The Licensing Officer highlighted the following:

- This application was for a New Premises Licence for Artists Residence, 33-34 Regency Square Brighton. If granted the licence would replace the two existing premises licences that covered 33 and 34 Regency Square, as the application has stated they would be surrendered if this application was granted.
- The application sought the licensable activities of films, recorded music and alcohol from 10am to 11pm on Sunday – Thursday and 10am to midnight Friday and Saturday. Late night refreshment was applied for daily from 11pm -midnight. Alcohol had been applied for sales both on and off the premises.
- The premises fell with the Cumulative Impact Area.
- The Licensing Authority received 13 representations. They were received from local residents, a Resident's association, a resident's management company, Sussex Police and the Licensing Authority.
- On Wednesday 19th June an email was sent to all 13 reps to send annotated plans and to ask if they would be attending. 8 replied and could not attend but wanted their reps to be fully considered. Rep 1 sent additional information on Friday including pictures, that had not been circulated and it was for the panel to decide if they wished to accept.
- All parties were canvassed, and these were accepted.
- The Resident's Association, which is rep J on page 79-80 confirmed they would be attending and were present.
- The Representations had concerns relating to the Prevention of Crime and Disorder, Public Safety, Prevention of Public Nuisance and the Protection of Children from Harm. These could be found in Appendix D.
- The premises fell within the Cumulative Impact Area. New applications that were likely to add to the existing cumulative impact should have normally been refused following relevant representations. This presumption of refusal could be rebutted by the applicant if they could show that their application would have no negative cumulative impact on the licensing objectives including the Prevention of Crime and Disorder and Public Nuisance.
- The 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 in the light of the individual circumstances of the case. If an application was unlikely to add to the Cumulative Impact off the Area, it could be granted.

- Each application was still considered on its own merits and there was discretion to depart from the policy where justified.

Questions to the Licensing Officer

- 17.3 The Panel agreed that photos highlighting issues outside the venue be shared by the Licensing Officer.
- 17.4 Mr Browning acknowledged that this had been an issue.
- 17.5 In response to Councillor O'Quinn, the Licensing Officer stated that the licence covered the Trashed/Sneaky Panda Bar.
- 17.6 In responses to Councillor Simson, the Licensing Officer stated that the licence included any music played until 12pm and that the application included off sales on this.

Representation from Sussex Police

- 17.7 Hannah Staplehurst addressed the panel and stated the following:
- This was an application for a new premises licence for Artist Residence at 34 Regency Square. Sussex Police had raised a representation against granting this application on the grounds that it would undermine the Licensing Objectives of the prevention of crime and disorder and public nuisance.
 - There were currently two premises licences in use for the George IV Hotel, 34 Regency Square and The Set Restaurant, 33 Regency Square, the applicant had stated in this application should this licence be granted, the two existing licences would be surrendered.
 - This representation stemmed from information which was received by the Sussex Police licensing team that a new bar was operating in the basement of 34 Regency Square. Following a visit on Friday 8th March by the Sussex Police representative and the Licensing Authority, it was established there was a new cocktail bar called 'Trashed/Sneaky Panda' operating in an unlicensed area of the premises licence and there were also a number of licence conditions being breached. An email detailing the breaches was attached to the representation letter.
 - A following visit was conducted for the 13th March 2019 where a number of conditions were now being adhered to.
 - Following the visits and all communication with the premises, this application had been submitted in order to add the bar in the basement on to the licence plan and link the 2 Premises Licences together however Sussex Police had concerns that no restaurant conditions had been offered in this application, therefore under the matrix approach within the Brighton & Hove City Council Statement of Licensing Policy Section 3.3, as this premises was within the Cumulative Impact Zone, Sussex Police believed the premises would now sit under the "pub" category which was not supported by the policy and matrix.
 - Further concerns of Sussex police was the location of the premises, Regency Square suffered from a high amount of anti-social behaviour. A majority of the anti-social behaviour was caused by the street community and public drinking, further crime statistics showed this area suffered from high levels of drug dealing and break in/thefts of vehicles in the local area. This raised further concerns over the fact off

sales had been added to this application, as alcohol could be purchased at the hotel and consumed on Regency Square causing a potential increase in Public Nuisance. No further condition had been offered on the restrictions of off sales to mitigate further risks in the local area.

- Sussex Police licensing team had been in communication with the restaurant and hotel management at the premises, at a meeting on the 13th March at the premises no of the suggested conditions which were offered for the bar had been included in the application. Therefore another area of concern was how the venue was being run under the current management, Sussex Police felt there was not a clear chain of command, having met with 2 managers during visits, and received no communication with the DPS.
- Also within a short walking distance was Preston Street which was densely saturated with licensed premises, pubs, restaurants and late night take-aways, this was a cause of concern to Sussex Police as the levels of crime was increasing in this area.
- Sussex Police felt that allowing a new licence from a hotel and restaurant to a pub within the cumulative impact area, should be very closely scrutinised before a licensing panel and asked the panel to consider the statement of licensing policy. The public health framework which evidenced the high number of incidents linked to alcohol within this area, the location of the premises being on the edge of the night time economy as well as the previous breached of the current licence.

Questions to Sussex Police

17.8 In response to Councillor O'Quinn, the Sussex Police representative stated the following:

- Expressed concerns where removal of restaurant conditions; that both alcohol and vertical drinking would become available and not be deemed ancillary to a meal thus changing the status of the restaurant to a pub.
- A booking system was suggested to further reinforce the restaurant status and discourage any possibility of becoming a bar.
- Crime statistics relevant to the area were given to provide the panel with a brief overview as to the severity with which considerations of the cumulative impact had to be made.
- It was noted that officers as part of Operation Marble had recently inspected the venue on a Friday evening and noted no issues.
- It was confirmed that extended hours for "Trashed/Sneaky Panda bar" were being sought and that residents could buy just a drink at any time.

17.9 In response to Councillor Simson, the Sussex Police representative stated the following:

- That there had been a lot of breaches. It was stated that following a visit various issues regarding the management of the venue were of concern.
- It was noted that the DPS holder should be set for either Dan Kenny or Lucy Bayliss in order to establish a consistent presence at the venue.

Representation from Mike Davies (Regency Square Society)

17.10 Mike Davies, Regency Square Society addressed the Panel and stated the following:

- Artists Residence was a good neighbour.
- It was noted that the Regency Square Society was over 30 years old and that the purpose was to foster a sense of community in an area that consisted of 14 hotels, 2 offices and 53 residential quarters, approximately totalling 600 people.
- It was stated that promotion of the residential feel of the area was key.
- Concerns regarding some issues that had occurred in the past were given.
- It was also confirmed that Regency Square Society was looking to establish a blueprint through the Artists Residence Licensing Panel for future licence applications.

Questions to Mike Davies (Regency Square Society)

17.11 In response to Councillor O'Quinn, Mike Davies stated that the Regency Square Society had spoken to the premises and noted that they were helpful in the past. It was further stated that residents living either side were not happy with the current situation at the venue.

Representation from Applicant

17.12 The applicant addressed the panel and stated the following:

- It was clarified that a single licence was being applied for in order to deal with anomalies within the 2 currently in existence.
- The venue's industry achievements were noted as proof that the venue was regarded as highly regarded.
- It was noted that more issues were prevalent in the area 20 years ago and had since been resolved despite becoming a central cut-through to the seafront.
- The applicant stated that the objective was to attempt to find a solution that benefitted everybody and noted the efforts the venue were committed to such as rescinding the tables and chairs licence to the front of the building, giving up off sales, all drinks to be banned outside the front of the building and designation of a smokers area.
- It was reaffirmed that the venue would not be turned to a pub.
- It was noted that courtyard 1 was a service area and that the venue were willing to provide extra conditions to strengthen this.
- The solicitor proposed a condition that the menu was fully available at all times to the public with 2 rear rooms asset up purely for restaurant purposes with restaurant conditions.

Questions to Applicants.

17.13 In response to Councillor O'Quinn, the applicants and solicitor stated the following:

- It was confirmed that there would be a minimal amount of vertical drinking near the bar and none at trash/sneaky panda.
- An offer was made to create condition to cut off people inhabiting the courtyard from 9pm and limiting the capacity to 10 people.

17.14 In response to Councillor Appich, the applicants gave a brief overview of the bar and lounge.

17.15 In response to Sussex Police, the applicant agreed to write to local residents to provide information regarding the venue such as contact details.

Summaries

17.16 The Licensing Officer addressed the panel stated the following:

- If granted the licence would replace the two existing premises licences that cover 33 and 34 Regency Square.
- The application sought the licensable activities of Films, Recorded Music, and Alcohol from 10am to 11pm Sunday-Thursday and 10am to midnight Friday and Saturday. Late night refreshment was applied for daily from 11pm-midnight. Alcohol was now amended for on sales only.
- The premises fell within the Cumulative Impact and Special Stress Area. The question for the panel was whether they considered that the application was likely to add to the existing Cumulative Impact.
- If it was unlikely to add to the Cumulative Impact or the applicant had demonstrated that it wouldn't impact then the panel could consider granting the application and any condition to meet Licensing Objectives and to control cumulative impact had to be clear, precise, and enforceable. The penalties for breaching conditions were severe, with an unlimited fine and/or 6 months imprisonment, so this was particularly important.
- 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, it would need to demonstrate that granting would undermine a licensing objective and conditions would be ineffective in preventing problems.
- 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 have given 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 and;
 - Its own statement of licensing policy

- It was important to note that each application would be given individual consideration on their own merits.

17.17 The Regency Square Society representative addressed the panel and stated that the society were happy since all issues had been addressed. It was further stated that the Regency Society would be happy to communicate information of Artists Residence through the newsletter.

17.18 The Solicitor addressed the panel and stated the following:

- There had been an attempt to arrive at a compromise for everyone.
- It was noted that by agreeing various conditions, the cumulative impact was reduced.

17.19 **RESOLVED** – that the panel's decision was as follows:

The panel has read carefully the report of the Executive Director of Neighbourhoods, Communities and Housing starting on page 7 of the agenda. We paid particular attention to the representations, and considered a last minute written one from one of the objectors. We listened to and considered all the submissions made at the hearing.

This is an application for a new premises licence, covering 33 and 34 Regency Square. Number 33 operates as a restaurant and has the benefit of a premises licence authorising late night refreshment and the sale of alcohol by retail for consumption on the premises. Number 34 has a premises licence authorising the showing of films, making music, the performance of live music and the sale of alcohol for consumption on the premises.

The premises sit within the heart of the Cumulative Impact Area (CIA). The application is therefore subject to the special policy on cumulative impact as set out in the council's Statement of Licensing Policy.

The application proposes a single licence for the whole of the premises, linked to a surrender of the existing licences. The application proposed the following regulated activities:

Films 10.00 to 23.00

Recorded music 10.00 – 23.00 Sunday to Thursday and 10.00 to 00.00 Friday and Saturday. *

Late night refreshment 23.00 to 00.00 on Friday and Saturday

Supply of alcohol for consumption on and off the premises – Sunday to Thursday 10.00 to 23.00 and Friday and Saturday 10.00 to 00.00.

Supply of alcohol to hotel residents and their bona fide guests at all times.

(* The Case Officer confirmed that following deregulation, consent for recorded music was only required after 23.00)

The applicant company was represented by Alastair Browning, (Lawyer) Justin Salisbury, (DPS and director of applicant company) Lucy Bayliss General Manager and Dan Kenny (Chef/owner of the Set restaurant at 33 Regency Square). At the hearing, the legal representative withdrew the application for off sales.

The effect of the cumulative impact policy is that applications for new premises licences will normally be refused following relevant representations. The presumption of refusal can be rebutted by the applicant if they can show that their application will have no negative cumulative impact on the licensing objectives. The special policy will only be overridden in exceptional circumstances. However, our policy recognises that different premises may have different level of impact depending upon their style and characteristics. If an application is unlikely to add to the cumulative impact of an area, it may be granted.

We heard from the Police that Regency Square suffers from a high degree of anti-social behaviour, including street drinking. Based on our own knowledge of the area, we accept this is the case. The introduction of off sales had been an issue, but its removal from the application lessened Police concerns. The Police representative also added that following their visit to Trashed/Sneaky Panda, referenced in their representation, they were concerned that there was no clear chain of command

We heard from the Licensing Authority's representative that the application had the ability to impact Crime and Disorder and Public Nuisance licensing objectives due to the premises' location in the CIA. The application included later hours but did not include restaurant conditions. Apart from one recent complaint about an alleged breach of condition – more than 4 smokers outside after 7 pm, there were no recorded complaints against the premises. The officer acknowledged that following the Police visit to Trashed/Sneaky Panda, the premises had worked hard to rectify matters. She recommended that the DPS be changed to an employee who was at the premises on a daily basis.

We also heard from representatives of the Regency Square Area Society. They advised that Regency Square was predominantly residential. There were 14 hotels, of which only three had bars. Their perception was that the hotel was a good neighbour, but despite good intentions, there were problems with late night noise and patrons drinking on the pavement. They considered that the outside tables and chairs were an inducement to loiter, drink and smoke. Occupiers in adjacent properties were most closely affected by issues at the hotel. The buildings were old and not purpose built. Lack of soundproofing was an issue. Some of the flats directly overlooked the back courtyard. There had been times when guests had used the fire escape for smoking. The Society would be happy to publish contact details for the hotel in their newsletter.

The applicant presented the application, and responded to questions from the Panel and objectors. A number of points were made clarifying the application:-

- The application had been submitted following the Police visit in March 2019. There had been a misunderstanding of the scale of permitted activities under the two existing licences under which the premises was operating. It was deemed sensible to seek a single licence to cover 33 -34 Regency Square and to surrender the existing ones.
- The applicant accepted that anti-social behaviour in the Square was an issue.
- Many of the problems were centred at the front of the premises. The premises had the benefit of a Tables and Chairs Licence. That was to be surrendered, and the tables removed. A condition to restrict tables and chairs being erected outside the premises was acceptable.
- Patrons would not be able to leave the premises with a drink, even to smoke. The designated smoking area would be controlled, primarily by the member of staff responsible for the outside area. There would be a maximum of 4 smokers per entrance/set of steps after 19.00 hours. The area is covered by CCTV, the monitor for which is in the Trashed/Sneaky Panda bar. Signage reminding customers that drinks cannot be taken outside could be displayed.
- The bar previously known as Trashed/Sneaky Panda is small, with a maximum capacity for 14. Service is to be to seated customers only. It is now known as Sneaky Panda. The windows to this area will be closed after 21.00
- The premises had not received any direct complaints. They aimed to work with neighbours.
- The lack of offered restaurant conditions was not indicative of a business wishing to morph into a pub. The premises was and would continue to operate as a hotel. Over the last five years in particular, eating habits had changed and the applicant wanted flexibility. Substantial food would be available at all times the premises were open for the sale of alcohol. Traditional Restaurant conditions would be acceptable for the rear two restaurant rooms.
- A condition not to use the small courtyard after 9 pm would be acceptable, as would a condition limiting occupancy to 10 customers
- The other courtyard is only used for service purposes. A condition that it cannot be after 21.00 hours except for emergencies was agreed
- There was more demand for late night alcohol sales on Friday and Saturday and the extra hour was important for the business.
- Management had responded positively to the issues raised by the police following the visit to Trashed/Sneaky Panda in March 2019. Training had been arranged and there were now clearer chains of command. The applicant's representative was prepared to give an undertaking to make an application to change the DPS.
- A personal licence holder is at the premises at all times.
- No rubbish/recycling will be put out after 23.00 or before 08.00 hours.

The panel have considered the individual merits of the application as well as the policy context. The members appreciated the removal of off sales from the application, and the

conditions put forward on the operating schedule. They noted that live music and making music, currently permitted at 34 Regency Square, would no longer be part of the hotel's operation. They also took into account the additional conditions that the applicant was prepared to accept. They considered that with appropriate conditions, the application would not add to the problems in the area, and as such the application could be granted. They noted that the Regency Square Area Society's representatives were satisfied with the revised application, and agreed conditions.

The application as applied for is therefore granted with the following conditions and restrictions:-

- i) The licence shall not come into force unless and until the licences for The Restaurant at Artist Residence 1445/3/2104/05508/LAPREN and the George IV Hotel 1445/2017/01977/LAPRET are surrendered
- ii) No off sales
- iii) The Mandatory Conditions
- iv) The following special conditions imposed as a result of the hearing:-
 - a) The Courtyard, to be renamed the Garden Area, shall not be used after 21.00 and capacity is to be limited to 10 customers. In this regard, we would welcome an up-to-date plan of the premises to be attached to the licence.
 - b) Rear 2 restaurant rooms - Full restaurant conditions apply.
 - c) Casual dining areas – waitress service only
 - d) Lounge bar –waitress service only to seated customers
 - e) Bar area - no more than 8 standing customers at any one time
 - f) Outside front of the premises – no tables and chairs; patrons and their guests will not be permitted to consume drinks outside the front of the premises at any time: the number of smokers on each front doorstep will be limited to a maximum of 4 at any one time between 19.00 and 08.00 hours
 - g) Rear courtyard - shall not be used by guests at any time, and shall not be used except in an emergency after 21.00 hours
 - h) Secret Cocktail Bar - Trashed / Sneaky Panda – service to seated customers only; maximum capacity 14; windows closed after 21.00 hours
 - i) General - A personal licence holder shall be on the premises at all times they are open to the public: No rubbish/recycling to be put out after 23.00 or before 08.00 hours. The licensee shall ensure that all reasonable steps are taken to minimise the risk of public nuisances occurring from the operation of the premises: There will be supervision of the entrance/exits to the premises at peak exit times to ensure patrons leave the area quietly and quickly; Doors are to be kept closed at all times (other than for access and egress) and windows are to be kept closed after 23.00 hours – Secret Cocktail Bar excepted, when 21.00 hours applies.

- v) Conditions consistent with the Operating Schedule to the extent that they have not been superseded. For example, prevention of crime and disorder provision prohibiting the sale of lagers, beers or ciders with an ABV content exceeding 6% for consumption off the premises is rendered unnecessary by the withdrawal of that part of the application relating to off sales.

The Panel consider that the imposition of conditions is appropriate for the promotion of the licensing objectives.

The meeting concluded at 12:20pm

Signed

Chair

Dated this

day of