

**LICENSING & GENERAL PURPOSES COMMITTEE
GENERAL LICENSING PANEL**

21 December 2018

Minutes of the General Licensing Panel held at the Town Hall, Bexhill-on-Sea on Friday 21 December 2018 at 10.00am.

There were present:

Members of the General Licensing Panel:

Councillors A.K. Azad, G.S. Browne and C.J. Saint

Interested Parties

Designated Premises Supervisor: Ms Susannah de Sherburne-Swann

Representors: Drs Andrew and Liz Bamji
Peter Morris

Advisory officers: Deputy Legal Services Manager - Wealden & Rother Shared Legal Services, Senior Environmental Health Officer (Licensing), Environmental Health Licensing Officer and Democratic Services Officer.

Also Present: 3 members of the public.

LP18/11. APPOINTMENT OF CHAIRMAN

Councillor Saint was duly appointed as Chairman of the Panel for the hearing.

LP18/12. APPLICATION TO VARY A PREMISES LICENCE – THE CRAB AND LOBSTER, 13 WEST STREET, RYE
(5.1)

Consideration was given to the report of the Executive Director that gave details of an application to vary a premises licence for The Crab and Lobster, Ground Floor, 13 West Street, Rye for the licensable activity of the sale of alcohol (on sales only) from Thursday to Monday between the hours of 11.00am and 6.00pm (currently 2.00pm and 6.00pm) and add Tuesday and Wednesday 11.00am and 6.00pm. Thirteen representations had been made in relation to the application in regard to the licensing objective of the prevention of public nuisance and public safety.

Prior to the commencement of the hearing, the Deputy Legal Services Manager gave advice to the Designated Premises Supervisor, Ms de Sherburne-Swann and the representors regarding the grounds on which the licensing application could be considered.

The Chairman welcomed all who were present and gave general advice in regard to the hearing. The Panel then proceeded to hear the case following the adopted procedure and all parties present at the hearing were invited to address the Panel.

The Panel heard from Mr Mark Randolph, Senior Environmental Health Officer (Licensing), who presented the report of the Executive Director detailing the application and then from Ms de Sherburne-Swann, who presented the case for the application.

The Panel also heard from two of the representors present, Dr Andrew Bamji and Mr Peter Morris, who detailed their concerns on behalf of themselves and a number of the other representors. Dr Bamji and Mr Morris' concerns were primarily in relation to public nuisance in terms of noise emanating from the premises, as they lived very close by and also noise of patrons leaving the premises. All letters of objection were given the Panel's full consideration.

The Panel deliberated the application, which was determined having regard to the licensing objectives, together with the Guidance under Section 182 of the Licensing Act and the local Licensing Policy and retired to make their decision in private session.

RESOLVED: That the application for a variation to a Premises Licence be refused as set out in Appendix 1.

CHAIRMAN

The meeting closed at 11.45am

GLP181221.lh

Rother District Council
DECISION NO: WK201810313

GENERAL LICENSING PANEL DECISION NOTICE

Date of General Licensing Panel Meeting: 21 December 2018

Venue: Town Hall, Bexhill-on-Sea

Date of Decision: 21 December 2018

NAME AND ADDRESS OF PREMISES:

The Crab and Lobster, Ground Floor, 13 West Street, Rye, East Sussex, TN31 7ES

NAME(S) OF APPLICANT:

The Crab and Lobster Rye Limited

REASON(S) FOR REPORT:

The report had been subject to thirteen representations on the grounds of prevention of public nuisance and public safety.

DECISION MADE AND REASONS FOR IT:

The Panel was asked to consider a variation application for the Premises Licence at The Crab and Lobster, 13 West St, Rye. The Panel had been provided with the variation application, together with the representations made by the Interested Parties, together with additional evidence from the Applicant and the Interested Parties provided in recent days. In addition, the Panel had regard to their own Statement of Licensing Policy, and the Secretary of States Guidance under Section 182 of the Licensing Act 2003.

The Panel was initially addressed by the Senior Environmental Health Officer (Licensing) who outlined the variation application and supporting information provided by the Fire Officer in respect of fire safety at the premises following an inspection in the last few days. It was explained, that in essence the variation application sought to extend the licensing hours to 11am from 2pm, and by including Tuesdays and Wednesdays which would see the premises providing alcohol seven days per week from 11.00-18.00; and in addition permitting off-sales during those hours. The Panel recognised that this represented a sizeable shift in emphasis for the premises, given their stated position in May 2018 when applying for their original licence. At that stage they stated alcohol was only required to enhance the shopping experience when purchasing antiques and was very much ancillary to the antique business. The Panel was satisfied the variation represented the ability to sell alcohol to non-antique purchasing customers, thus stepping away from the ancillary sales position offered during the original premises licence application in May 2018.

The Applicant was invited to address the Panel to explain how she proposed to uphold the licensing objectives given the extension of hours, and the new provisions for off-sales. In her brief submissions, she explained to the Panel why she wanted the variation to the licence, but failed to address any single issue in respect of the objectives, other than to state her position was the same as in May 2018. Invited by the Panel to elaborate on that, given the extension of hours, she stated she had nothing to add. In questioning, the Panel established that the premises had not been open since the licence had been granted in May, and indeed had only been open for the sale of antiques in the last few weeks. It was said that no alcohol had been sold

so far, and accordingly the Applicant could offer no empirical evidence from operating over the months since May, and was therefore asking the Panel to consider a variation against the backdrop of a licence that had not yet been tested to establish whether existing conditions were effective to uphold the licensing objectives.

Two of the interested parties, one of whom represented several of the 14 who had made written representations, then addressed the Panel. It was said that they had reservations at seeing the licence extended when it had not been tested. They raised issues of potential nuisance caused by the increase in alcohol sales and the associated vehicle and foot traffic to the premises owing to the extended activity. It was stated that some residents had living rooms and bedrooms only a matter of feet from the venue. They raised issues about internal alterations made to the premises, but it was clarified that other council departments, outside of this licensing hearing, were conducting this issue. There were statements made about the degree of trust that was being expected by the Applicant in relation to longer hours. It was said that local residents did not believe the Applicant could uphold the objectives, evidenced by the fact that since the premises had been open, potential breaches of existing licence conditions had been observed in relation to smoking outside the premises, and the failure to install a CCTV system in accordance with the specification required by the conditions. It was suggested that in the face of initial failures to honour conditions, adding more conditions would be meaningless. Other interested parties mentioned planning restrictions, but these had to be ignored by the Panel, as they were not relevant to the licensing decision itself. It was also stated that the concept of ancillary sales was being abused by the application, as it potentially meant it could lead to an alcohol venue that sold antiques as an ancillary issue. It was also said that increasing the operating hours as requested represented a significant increase to an untested business.

The Panel considered all the evidence provided by the parties and all the letters of representation from those who had not attended or appointed a spokesperson. The Panel had to be guided by the licensing objectives and in particular, what proposals the Applicant gave in how the new variation proposals could be managed had outlined. The representations detailed potential Public Nuisance issues that had not been addressed in any proper way by the Applicant. It was unfortunate, despite constant invitations by the Panel to address this issue, the Applicant had failed to make any meaningful proposals as to how she would uphold the objectives; in particular those detailed by the interested parties relating to public nuisance and public safety. The Panel was not satisfied by the Applicant's suggestion that upholding the objectives would be the same as outlined in May 2018, given the significant increase in the operation proposed in the variation application. The Panel was disappointed to hear that existing conditions were potentially not being met, even if some of those conditions were technically difficult. Given these failures, the Panel was satisfied that adding further conditions as part of the variation would not prevent potential future breaches, until the Applicant had taken the opportunity to manage the premises successfully over a period of time meeting the current conditions. Accordingly, the Panel was satisfied that it was an appropriate decision to refuse the application based on the submissions made in evidence and particularly during the hearing.

Rights of Appeal

Under the provisions of Section 181 and schedule 5 of the Licensing Act 2003 there is a right of appeal against the decision of the Licensing Committee if you are aggrieved at the outcome. This right of appeal extends to the applicant in the case of a refusal or restrictions on the licence, or the imposition of conditions to the licence. The right of appeal also extends to persons who have made representations where the licence has been granted, or that relevant conditions have not been imposed upon the licence. Full details of all the rights of appeal can be found within Schedule 5 of the Act.

Any appeal should be made to the Magistrates Court, Edward Street, Brighton, within 21 days from the date of notification of the decision. You must contact the Magistrates Court to establish the formal procedure for the appeal.

A written or electronic copy of this Notice will be publicly available to all parties, and published on the Council's website.