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Rother District Council



## LICENSING AND GENERAL PURPOSES COMMITTEE - GENERAL LICENSING PANEL

31 May 2019

Minutes of the Licensing and General Purposes Committee - General Licensing Panel meeting held at the Council Chamber, Town Hall, Bexhill-on-Sea on Friday 31 May 2019 at 10.00 am.

Committee Members present: Councillors R.K. Bird, G.C. Curtis and Mrs S. Hart.

### Interested Parties

Applicant: Ms Rosie Furnival  
Mrs Anne Furnival (mother of Applicant)

Representors: Mr A.J.W. Nunn  
Ms A. Taylor  
Ms J.S. Tucker

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

Also present: 1 member of the public and 1 member of the press.

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### LP19/1 APPOINTMENT OF CHAIRMAN

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

### LP19/2 MINUTES

The Chairman was authorised to sign the Minutes of the meeting of the General Licensing Panel held on 21 December 2018 as a correct record of the proceedings.

### LP19/3 REPORT OF THE EXECUTIVE DIRECTOR - APPLICATION FOR A PREMISES LICENCE - THE FIG, 2 HIGH STREET, RYE, TN31 7JE

Consideration was given to the report of the Executive Director that gave details of an application for a premises licence for The Fig, 2 High Street, Rye for the licensable activity of the sale of alcohol (on-sales only) from Monday to Saturday between the hours of 11.00am and 11.00pm and Sunday 11.00am and 10.00pm. Seven representations had been made in relation to the application in regard to the licensing objective of the prevention of public nuisance.

Prior to the commencement of the hearing, the Deputy Legal Services Manager gave advice to the Applicant, Ms Rosie Furnival, 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 Members then proceeded to hear the case following the adopted procedure and all parties present at the hearing were invited to address Members.

Members 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 Furnival, who presented the case for the application.

Members also heard from the three representors present, Mr Nunn, Mrs Taylor and Ms Tucker, who detailed their concerns, primarily in relation to public nuisance in terms of noise emanating from the premises and the disposal of waste, as they lived very close by and also noise of patrons leaving the premises. All letters of objection were given Members' full consideration.

Members 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 Premises Licence be granted as set out in Appendix 1.

## **CHAIRMAN**

The meeting closed at 1.30 pm

Rother District Council  
DECISION NO: WK/201901476

### GENERAL LICENSING PANEL DECISION NOTICE

**Date of General Licensing Panel Meeting: 31 May 2019**

Venue: Town Hall, Bexhill-on-Sea

Date of Decision: 31 May 2019

<b>NAME AND ADDRESS OF PREMISES:</b>	The Fig, 2 High Street Rye, East Sussex, TN31 7JE
<b>NAME(S) OF APPLICANT:</b>	The Fig Rye Ltd
<b>REASON(S) FOR REPORT:</b>	The report had been subject to seven representations on the grounds of prevention of public nuisance.

### DECISION MADE AND REASONS FOR IT:

#### Reasons for the Decision

The Members had been asked to consider the application for a premises licence in respect of The Fig, High Street Rye. The premises were described within the officers' report as a Tea Room and details from the Planning Department had set out the restrictions imposed in the planning permission restricting the premises to operate as a Tea Room. This application for the Premises Licence sought to extend the operation to offer alcohol to 11.00pm Monday to Saturday, and until 10.00pm on Sundays. At the outset of the meeting, it was explained in some detail that whilst the relationship between Planning and Licensing existed, they operated separately. It was necessary for both any potential licence and any planning permission to mirror the hours in each respective permission, and that whilst the licence could permit longer hours than currently permitted under the planning control, those hours could not be utilised until the planning permission was changed to recognise the longer hours.

The Senior Environmental Health Officer (Licensing) outlined the application and detailed the conditions offered by the applicant and those the applicant had accepted as offered by Sussex Police.

The applicant then addressed the Members. She stated that the café had been operating for three and a half years and stated her social media profile provided good reviews and that she wanted to be a positive influence within the neighbourhood. She said three other venues sold alcohol within close proximity, and they too wanted to offer customers the ability to enjoy alcohol throughout the day. She stated she was intending to apply for the planning permission to be extended. She was then asked to address the Members on the specific area of concerns identified by the Interested Parties. She stated she was unaware that the waste bags and bins caused a problem, as neighbours had not told her about the issue. She stated it was only a problem at the Bank Holidays when collections were disrupted, but the Interested Parties countered this stating it was a problem all the time. She

stated she was not aware this was the case, and when questioned, confirmed she did not live at the property, or indeed live in Rye. She wanted to emphasise that the waste collection had now been resolved, as she had contracted with a new company and that moving forward, they had assured her they would not collect waste at unsocial hours and would collect on Bank Holidays; this would prevent waste building up outside the premises.

The applicant then addressed the Members on other issues in the letters of objections from the Interested Parties. She stated she was not aware of odours escaping the premises into neighbour's houses and sought to assure Members she did not cook smelly food that could be a nuisance. She stated they were going to install an extraction system, but did not detail what that system would do in relation to smells or ventilation. When asked by Members what measures she would put in place to manage noise from patrons visiting the premises and when leaving the premises, she simply stated that her customers were not likely to be noisy and that she would ask them to respect neighbours and leave quietly. She detailed that she would control noisy patrons by asking them to be quiet and would refuse alcohol to those who were noisy. She had accepted a number of conditions suggested by Sussex Police already, as set out within the report.

The Members asked a series of questions relating to the accumulations of rubbish that had been provided in evidence by the Interested Parties. It was clear that accumulations of refuse had escaped the waste containers and were strewn across the footway. The Members were unhappy that this appeared to happen regularly according to the Interested Parties. The Members enquired whether rubbish could be stored in the rear of the premises, but it was said that there was no rear access and therefore it had to be stored at the front of the premises on the footpath until collected. The applicant stated that these issues would now be resolved by the use of the new waste contractor. The Members asked about the windows, which it was stated in photographic evidence provided by the Interested Parties, were left open, which allowed noise to escape. The applicant stated she would close the windows and use the extractor system, if it got noisy. The windows were double-glazed and would prevent noise escape. Questions were asked about smokers who may congregate outside the premises, particularly given its proximity to adjoining houses and the fact residents had bedroom windows immediately surrounding the area. The applicant stated she could only ask people to be quiet. She stated she would not allow customers to take drinks outside or migrate to the 'Lookout' nearby (this offered views of Rye Harbour and the distant countryside).

Within the evidence provided by the Interested Parties were details of an event held by the applicant where alcohol was provided without any permissions in place. The Members asked the applicant to explain how this had happened. In response, she stated that she had misunderstood the law and was confused by the practice of offering alcohol free as part of a menu. She apologised to the Members, stated that she now understood her obligations in relation to licensing law and now held a Personal Licence.

Three of the Interested Parties then addressed the Members. Concerns were raised about low-level noise disturbances from within their homes, some of this from patron noise and some from equipment used in the premises. It was restated that windows were left open at all times, irrespective of the weather, be it hot or cold, and that noise and odour escaped through the open windows causing nuisance. There was concern that should the premises be open until 11.00pm then the noise would only get worse and potentially louder as the street scene got quieter after the working

day. It was said no proposals had been put forward on how that noise was to be controlled to avoid disturbing neighbours, other than a denial that patrons would be loud, or that they would be asked to be quiet. Given that Interested Parties were being disturbed now and the premises closed at 5.00pm-6.00pm, they were not reassured there would be an ability to control patrons until late in the night. One resident detailed that drains that had been blocked in the Tea Room had flooded her garden. Southern Water had advised the neighbour to fit equipment to prevent the waste from the café blocking drains. During the evidence, an officer of the Council advised that 'Grease Traps' could be fitted, and this was accepted by the applicant. All the Interested Parties were concerned that the applicant appeared to have no knowledge of the rubbish situation given that the premises themselves piled up the rubbish on the footpath. Concerns were raised that, even today at the hearing, the details of the extractor/ventilation system was still vague and that there still seemed to be issues about the practice of leaving the windows open almost every day, regardless of the weather or temperatures. In addition to these concerns, the Members had regard to all the letters from the Interested Parties when considering their decision.

The Members asked a series of questions about the issues raised. It was said that the premises had been a restaurant for a number of years prior to the current Tea Room, but it was accepted not in the last 10 years.

During a short adjournment of the hearing, the applicant reduced their application to reflect the hours they believed they needed, as opposed to applying for long hours they had no intention to fully utilise. They reduced the application to:

Monday - Sunday 11.00am - 5.00pm. Save that between 1 April and 30 September of any year: Thursday, Friday Saturday and Sunday before a bank holiday 11.00am - 10.00pm.

The Interested Parties were asked to sum up their position based on the revised hours suggested and the submissions made to uphold the licensing objectives. They stated their position had not been altered and that they still had concerns that the applicant could confidently uphold the objectives. They were frustrated that much of what had been submitted appeared to be re-active to their concerns during the application process, rather than a statement of what the business understood its obligations to be in choosing to move the business into much longer hours of operation.

The Applicant summed up by stating that she had dealt with the issue of the rubbish, she would fit a grease trap to solve the drainage situation and that she would keep the windows closed if necessary and manage the noise. She stated she did not want to upset her neighbours.

The Members 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 Members had to be guided by the licensing objectives and, in particular, how would the applicant manage the premises and uphold the licensing objectives particularly in relation to the Prevention of Public Nuisance. The representations detailed potential Public Nuisance issues that had not been fully addressed in any detailed way by the applicant. It was unfortunate, despite constant invitations by the Members to address these issues, 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 noise from patrons late into the evening in such a

noise sensitive location. The location was unusual given the directly adjoining properties and the narrow streets and as such, the Members had expected submissions that were more thorough on the measures to be put in place.

On balance, the Members were satisfied that conditions could be attached to the grant of a licence to ensure that the premises did not undermine the licensing objectives and they considered that the conditions attached as a result of the hearing were appropriate to attach to the licence. Many conditions had been accepted prior to the hearing with Sussex Police, and the Members considered those appropriate to attach. The Members were satisfied, on balance, that if the conditions were complied with the premises would not cause nuisance to neighbours and, given the reduction in the hours of operation offered at the hearing, they were satisfied it reflected an appropriate response to the application.

### **Decision Made**

Premises Licence be granted:

Monday - Sunday 11.00am - 5.00pm.

Save that between 1 April and 30 September of any year:

Thursday, Friday, Saturday and Sunday before a bank holiday 11.00am - 10.00pm.

#### Conditions offered by the applicant

##### a) General – all four licensing objectives

Strong management controls and effective training of staff so they are aware of licensing requirements.

No outdoor space connected to the business shall be used by patrons of the premises.

##### b) The prevention of crime and disorder

There shall be no selling of alcohol to intoxicated customers. Vigilance and prevention of any illegal substances. A strict entrance policy.

##### c) Public Safety

Safe lighting. All interior and exterior to be kept in order.

##### d) Prevention of public nuisance

Noise reduction measures to respect neighbours. Customers must leave the premises by 11.00pm.

##### e) The protection of children from harm

Vigorous I.D. checks. Must see I.D. from anyone who appears to be under 25, only passport and drivers licence accepted.

#### Conditions agreed with Sussex Police

- 1) Intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such a person as an ancillary to their meal. Suitable beverages other than intoxicating liquor (including drinking water) shall be equally available for consumption with or otherwise as an ancillary to meals served in the premises.
- 2) The Premises Licence Holder shall ensure that all staff members engaged, or to be engaged, in selling alcohol at the premises shall receive the following induction training, prior to the selling of such products: The lawful selling of age restricted products, refusing the sale of alcohol to a person who is drunk.
  - a) Further verbal reinforcement/refresher training covering the above will be carried out thereafter at intervals not to exceed three months, with the date and time of the verbal reinforcement/refresher training documented.
  - b) All such training undertaken by staff members shall be fully documented and recorded and signed by both the employee and the Designated Premises Supervisor (DPS). All training records shall be kept on the premises and made available to Sussex Police, officers of the local authority and officers from the Trading Standards team upon request.
  - c) A list of staff members who are authorised to sell alcohol on the premises shall be kept. This shall be endorsed by the DPS with the date such authorisation commences.
- 3) The premises will operate an age verification policy set at a minimum of 25 years (e.g. "Challenge 25") whereby any person attempting to buy alcohol who appears to be under the specified age e.g. 25 will be asked for photographic ID to prove their age. The recommended forms of ID that will be accepted are passports, official Photographic Identity Cards issued by EU states bearing a hologram or ultraviolet feature, driving licences with a photograph, photographic military ID or proof of age cards bearing the 'PASS' mark hologram. The list of recommended forms of ID may be amended or revised with the prior written agreement of Sussex Police, the Licensing Authority and Trading Standards without the need to amend the licence or conditions attaching to it. Signage advertising the age verification or 'Challenge 25' policy will be displayed in prominent locations in the premises.
- 4) An incident log will be maintained by the premises showing a detailed note of incidents that occur in the premises. The log will be inspected and signed off by the DPS (or a person with delegated authority) at least at intervals of no more than four (4) weeks.
  - a) The log book should be kept on the premises and be available for inspection at all times the premises are open by authorised officers of the Licensing Authority or the police. An incident will be defined as being one which involves an allegation of a criminal offence.
  - b) Feedback shall be given to staff to ensure these are used on each occasion that a refusal or incident occurs at the premises.
  - c) Any refusals made for alcohol service e.g. underage, will also be recorded (either in electronic or written form) and feedback given to staff as relevant.

#### Additional Conditions

##### Prevention of public nuisance

No waste shall be left outside the premises unless within a solid container or in a

gull proof bag. There shall be no collection of the waste from the premises before 07.00am or after 8.00pm.

All windows and doors shall be closed during the hours permitted within the premises licence, other than for immediate access or egress.

Electrical hand drying facilities within the premises shall not be fixed to any party wall.

A grease trap shall be fitted to the foul water drainage system.

No patrons shall be allowed to take alcohol outside the premises, either in bottles or open vessels.

### **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.