

Minutes

of a meeting of the

General Licensing Panel



held on Wednesday, 6 December 2023 at 11.00 am
in Meeting Room 1, Abbey House, Abbey Close,
Abingdon, OX14 3JE

Open to the public, including the press

Present in the meeting room:

Councillors: Ron Batstone (Chair), Patrick O'Leary and Val Shaw
Officers: Emily Barry (Democratic Services Officer), Sam Fowles (Legal Counsel) and Richard French (Licensing Officer).

13 Election of a chair

A motion, moved and seconded, to elect Councillor Ron Batstone as chair of the panel was carried on being put to the vote.

RESOLVED: that Councillor Ron Batstone be elected as chair of the panel.

14 Declarations of interest

There were no declarations of interest.

15 Procedure for the meeting

The chair confirmed that all parties present understood the procedure.

16 Application for street trading consents The Swan, Faringdon; The George, Sutton Courtenay; and The Crown, Marcham

The chair began by noting the preliminary submission presented in written submissions received by the Council on 30 November 2023 which had been circulated to members of the panel in advance of the meeting.

1. The Applicant argued that:
 - (a) Paragraph 5.5 of the Council's licensing policy provides that new applications will be subject to a 28-day consultation. Paragraph 5.20 provides that consent for a licence will automatically be granted where no objections are received. The Officer' Report noted that the Panel will not permit late evidence unless all parties agree.
 - (b) Mr Cockhill's evidence (objecting to the application on highways grounds) was the only objection and was submitted after the consultation had closed. The

Council should, therefore, not take account of Mr Cockhill's submission and should, in effect, determine the application as if there were no objections.

- (c) Further or in the alternative, Mr Cockhill's submission was generic and did not relate specifically to the Premises. Mr Cockhill's submission should, therefore, be discounted on that basis.

In oral argument, the Applicants advanced the argument that the policy should be treated as a "hard and fast rule". This is wrong in law. As successive courts have made clear, a public authority is not permitted to treat policy or guidance as a "direction" [see, for example, *Laker Airways v Department of Trade* [1977] 1 QB 643, CA; *Belfast City Council v Miss Behavin' Ltd* [2007] UKHL 19].

The panel adjourned to discuss the preliminary point made by the applicants. The panel considered its relevant legal duties as follows:

- a) To follow its stated policy unless material considerations indicate otherwise;
- b) To refrain from improperly fettering its discretion;
- c) To take all material considerations into account; and
- d) To ensure the process was fair.

The panel was grateful for the applicant's confirmation in oral argument that it was not materially prejudiced by the late provision of Mr Cockhill's evidence.

The panel therefore determined to consider Mr Cockhill's submission for the following reasons:

- a) The panel was required not to fetter its discretion. It was, therefore required to consider the issue in the round. The panel was also aware of its duty to ensure a fair hearing. Mr Cockhill was a highways expert speaking on behalf of the Local Highways Authority. For this reason, his submission was likely to be material.
- b) The generic nature of Mr Cockhill's submission, and the fact that it was not supported by evidence from local objectors was a matter which might reduce the weight placed on the submission, but it did not make it immaterial. The weight placed on Mr Cockhill's submission was a matter for the panel and was best decided when considering all of the relevant issues in the round.
- c) The applicants accepted that it was not materially prejudiced by the late provision of Mr Cockhill's submission. It could, therefore, be considered without prejudicing the fairness of the hearing.

The panel reconvened and conveyed their decision before moving on to consider the applications for street trading consents at The Swan, Faringdon; The George, Sutton Courtenay; and The Crown, Marcham. The chair invited the licensing officer to present their report.

Licensing officer

The licensing officer introduced their report, informing the panel that the applicants had been advised they needed to apply for street consent after traders had been found to be trading without the required consent. The licensing officer detailed that five comments had been received in respect of the application for The Swan, six comments had been received in respect of the application for The George and one objection had been received in respect of the application for The Crown. The licensing officer went on to advise that the objection in respect of The Crown had been received outside of the 28 day consultation period but that it had been accepted on the basis that it was submitted by a regulatory body. The licensing officer advised that usually any necessary planning permissions should be sought in

advance of a street trading consent application but that in this instance it had been agreed planning permission would be sought upon the grant of street trading consent but that the applicants were clear this needed to be obtained before trading could commence.

No members of the panel, or the applicants or objector, had questions for the licensing officer.

The applicants

Leigh Schelvis, representing the applicants, then presented their case to the licensing panel. He highlighted that Oak Tavern pubs were 'wet led' pubs with no desire to change this. The applications before the panel were to allow for the ancillary provision of food at the various locations, and whilst it was appreciated some customers would take their food away, there was no specific takeaway element to them. It was conveyed that the applicants had seen an opportunity to use the space available to them in an innovative manner and as a platform for local businesses addressing the challenges which had faced the hospitality industry during the pandemic. It was highlighted that the applicants would take no direct profit from the food sales. Traders were of the view that 80 per cent of purchases would be consumed on the premises and that ten per cent of customers would drive to the location.

The panel then heard from one of the proposed traders – Dylan Shankland. He explained how the queueing system for orders worked and advised that taking an order took approximately one minute and that whilst the order was prepared customers were directed inside the pubs to wait. Mr Schelvis highlighted there was no intention for congregation on the public highway.

Simon Collinson one of the applicants informed the committee that Oak Taverns was a family run business who bought failing pubs and made large investments in their improvement with a view to turning them into successful village pubs. Due to the size of the pubs they were not viable for food but Oak Taverns had developed a symbiotic relationship with the traders where customers could purchase food.

On The Swan, Faringdon, the representative for the applicants addressed the concerns that had been raised during the consultation process. Firstly, he informed the panel that there had been no evidence of parking or traffic issues at the site. He went on to advise that as part of the Oak Taverns risk assessment policy considerations had to be made on parking and traffic impact with traders having to ensure that no entrances were blocked. It was stated that there were double yellow lines at the site and that customers were heavily encouraged to walk to the venue.

In relation to road safety the representative of the applicants advised this was again covered in the risk assessment traders were required to complete. No surveys or crime data had been submitted in response to the consultation.

The representative for the applicants advised that concerns raised over noise and litter would be addressed by the additional proposed conditions as set out in the supplementary documents submitted by the applicants which included provision of additional bins and litter sweeps. He further highlighted to the panel that no concerns of this nature had been raised by environmental health.

The applicants confirmed that they wished to amend the proposed additional condition in relation to annual usage from 52 days to 26 days and that they had agreed to several other additional conditions to be applied to the site.

On The George, Sutton Courtenay, the representative of the applicants noted the comments of objection from Oxfordshire County Council Highways and local residents and that they focused on the requirement for planning permission, requests for a compromise in the hours of trading, concerns around hygiene and concerns around traffic and parking issues. Taking these in turn the representative advised that as previously asserted, planning permission for the sites would be obtained should the street trading consents be granted.

Although the applicants initially requested trading permission for seven days a week, in response to residents' comments, they had agreed to reduce this to a maximum of one day per week with further conditions to limit the annual usage to a maximum of 52 days and operating hours to be limited to a maximum of five hours between 12pm and 9pm.

Addressing the concerns regarding hygiene and cleanliness, it was made clear that all traders are required to have the correct food safety and hygiene qualifications and to evidence this with the relevant documentation. In addition to this, extra conditions were proposed for the provision of additional bins and litter sweeps of the relevant areas.

Again, it was put to the panel that no evidence had been provided of parking issues and no enforcement action had been taken. It was argued that the traffic issues within Sutton Courtenay were not as a result of the street traders but instead was a long standing, historic issue.

On The Crown, Marcham, Mr Schelvis reminded the panel about the applicants' preliminary point and asked the panel to consider the relevance of Mr Cockhill's representation due to it being the sole objection submitted. He reiterated the generic form of the representation which had been provided for all three sites and appeared to have no specific application to the site in question nor any local consideration. He went on to advise the panel that the pub was located on the corner of Pack Horse Lane with no stopping markings outside. In addition, there was a large enclosed car park at The Crown where it was proposed traders would be positioned.

The panel expressed their initial concern that the street traders had been allowed to operate initially without the correct permissions. The applicants reiterated that they had believed that they were able to trade without any further consents as they were using the car parks of the respective pubs.

The panel went on to highlight their concerns in relation to The Swan and asked for clarification as to where traders would park at the sites. The applicants showed where they would be located and stated that The Swan was certainly the trickier site and was only suitable for the smaller traders due to the space available. This issue was not present at The George or The Crown as the relevant car park areas would be used for siting the traders.

The panel went on to ask where power for the vans was sourced from. The applicants advised that the vans plug into the mains power at the pubs and some use bottle gas. The applicants confirmed that noise levels were to be kept to a minimum and that no generators would be left running.

The licensing officer then asked a number of questions of the applicants. Mr French asked who was responsible at Oak Taverns for ensuring legal compliance and carrying out due diligence. The applicants confirmed that as directors it was both David and Simon Collinson. The licensing officer then asked if any due diligence had been carried out in respect of

allowing street traders to operate at their pubs. The applicants confirmed that they had believed that they were complying with the law as they had seen other operators do so and also this was permissible in other counties.

The licensing officer then went on to ask what assurances the applicants could give the panel that they would follow any conditions set down should the consent be granted. The applicants advised that the directors in partnership with their managers would be responsible for ensuring compliance. They highlighted that they work within a heavily regulated sector and can therefore demonstrate a history of achieving compliance. The applicants were also of the view that traders would self-regulate in order that they could continue to use the space and opportunity provided.

In reference to the public support which the applicants' representative had highlighted in their documentation and presentation, the licensing officer asked if these had been received as a result of the Facebook post asking for letters of support. The applicants confirmed that yes these will have been received as a result of this but that it had been agreed by the licensing team leader that this request could be made.

The licensing officer then asked the applicants about how they gathered the data in relation to the number of customers who take their food away and who walk to the venue. The applicants confirmed the information was anecdotal and taken from observations of the traders. The applicants advised the panel there can be 50 to 60 people in the pub but not that many cars in the car park indicating that the vast majority of customers were walking.

The objector had no questions for the applicants.

The objector

Alasdair Burn, the objector, then presented their case to the panel. The objector highlighted their objection to the application outside The Swan, Faringdon, on the grounds of highway safety and parking congestion. They provided pictorial evidence, included in the agenda pack, which showed use of a one way road the wrong way and parking which blocked the road. The objector noted that the roads illustrated are busy and vehicles often pull in at speed.

The objector also highlighted the proximity of the trading vans to both his and his neighbour's property. He informed the panel that they were within less than 2 metres of their front doors.

The objector summarised by advising the panel that he is supportive of community focused pubs but that they need to be able to achieve this within their own boundaries so as not to cause unnecessary disruption. It was his view that in this case the negatives far outweighed the positives.

The panel had no questions for the objector.

The licensing officer asked the objector to talk the panel through the photographic evidence which had been submitted with their representation. The objector did so, highlighting the dangerous highways use and whilst they accepted this was not the responsibility of Oak Taverns, they noted that this had increased since the street traders had been operating. The objector also highlighted the photos showing that the footpath was entirely blocked at times when traders were operating.

The licensing officer also asked the objector if they had tried to address their concerns with anybody directly. The objector advised he had approached the managers of the pub but that they had been disinterested in listening to his concerns. He informed the panel that he had not contacted Oak Taverns directly about his concerns.

The applicants had no questions for the objector.

Final submissions

The chair then invited each party to present their final submissions. The licensing officer did not provide a final submission.

The applicants' representative made a final submission. On The Swan, they accepted that whilst there were some concerns there were also resident support for the application. The complexities of the site were again noted and the applicants confirmed they wanted to ensure that the correct traders were allowed to use this location. They went on to advise that it was beyond Oak Taverns to control the traffic in the area and that whilst they endeavour to do their best to put public safety first there were limits to what was possible to control.

On The George, it was highlighted that there were high levels of resident support for the application. No objections had been submitted by the police or environmental health.

On The Crown, it was highlighted that there were no resident objections at all. It was noted that the representative from Oxfordshire County Council Highways had not attended in person to support their objection to all of the sites and nor had they provided any direct application to the sites in their representation.

The representative of the applicants concluded by saying that Oak Taverns were looking to work with local communities to provide something of value and they respectfully requested that the applications were approved subject to the standard conditions and those put forward by the applicants in response to concerns raised.

Deliberation

The panel then deliberated the applications.

The panel considered the written and oral evidence of all parties, schedule 4 to the Local Government (Miscellaneous Provisions) Act ("the Act"), and the council's Joint Street Trading Policy ("the policy"). The panel only considered what would be reasonable and proportionate having regard to the Act and the council's licensing policy and the criteria to be considered in deciding whether a street trading consent should be granted and on what conditions.

On The Swan, Faringdon, the licensable activities would take place on the highway. The principal question between the applicants and objectors was, therefore, whether there was enough space in the street for the applicants to engage in the trading in which they desired to engage without causing undue interference or inconvenience to persons using the street.

The panel considered the written (which included photographs) and oral submissions of Mr Burn, who owned property near to the premises, which indicated that there were significant problems in the locality which were at least partly caused or contributed to by the applicants. The applicants responded that there was no evidence for the assertion but the panel was

not convinced by this argument. The sort of evidence apparently envisaged by the applicants was retrospective. The panel's role was forward looking and it was required to decide whether, as a result of granting the licence, undue interference or inconvenience may arise. To this extent, the panel was assisted by the submissions of Mr Cockhill (the Oxford County Council Highways Officer), who suggested that such interference or inconvenience would occur. The panel placed weight on Mr Cockhill's analysis on the basis that he was a highways expert.

The panel was also conscious that it was required to consider matters beyond the mere legality of parking. The panel noted that, in the photographs provided by Mr Burn, the street trading was effected by placing a large tent on the pavement. This appears to have substantially or completely blocked the pavement making it difficult or impossible for pedestrians to pass without stepping into the road.

The panel also gave weight to the analysis advanced by the applicant and to the fact that the applicant was an experienced landlord.

The panel nevertheless concluded, that the application should not be granted because there was not enough space in the street for the applicants to engage in the trading in which they desired to engage without causing undue interference or inconvenience to persons using the street.

On The George, Sutton Courtenay, the objections to and discussion around the application focused on the following:

- a) the extent of the risk of creating increased traffic and parked cars around the Premises and local area, thereby negatively impacting on residents and road users.

The panel gave weight to the submissions of Tom Cockhill, of Oxfordshire County Council Highways, on the basis that he was a highways expert and might be expected to have a particular insight into highways impacts. The applicants suggested that the panel should be reassured by the fact that most of the parking around the premises occurred legally but the panel was not persuaded by this argument. The panel's role was to consider whether the granting of a street trading licence in relation to a location with insufficient space, it would cause "undue interference or inconvenience to persons using the street" [1982 Act, Sch. 4, para. 3(6)(a)]. This entitled the panel to go further than merely considering whether the parking in the vicinity was lawful. Nevertheless, the panel was satisfied that, with the proposed further conditions, any interference or inconvenience to street users could be suitably mitigated. The panel therefore concluded that the application should be granted subject to the agreed conditions.

On The Crown, Marcham, the objection to the application and discussion around the application focused on the following relevant issues:

- a) The extent of the risk of creating increased traffic and parked cars around the Premises and local area, thereby negatively impacting on residents and road users

The panel gave weight to the submissions of Tom Cockhill, of Oxfordshire County Council Highways, on the basis that he was a highways expert and might be expected to have a particular insight into highways impacts. The applicants suggested that the panel should be reassured by the fact that most of the parking around the premises occurs legally but the panel was not persuaded by this argument. The panel's role was to consider whether the

granting of a street trading licence in relation to a location with insufficient space, it would cause “undue interference or inconvenience to persons using the street” [1982 Act, Sch. 4, para. 3(6)(a)]. This entitled the panel to go further than merely considering whether the parking in the vicinity was lawful. Nevertheless, the panel was satisfied that, with the proposed further conditions, any interference or inconvenience to street users could be suitably mitigated. The panel therefore concluded that the application at The Crown, Marcham, should be granted subject to the agreed conditions.

The panel, satisfied with the decisions that were reached, called all members of the hearing back into the meeting room.

Decision

The chair then read out the decision notices:

That the panel refuse the street trading consent for The Swan, Faringdon on highways grounds and as set out in the decision notice.

That the panel grant the street trading consent for The George, Sutton Courtenay, subject to the standard street trading consent conditions and the additional following conditions:

1. Between the hours of 12 (midday) and 9pm, any trading permitted by this licence shall not exceed five hours.
2. Trading shall not occur on more than one day in any one week
3. Trading shall not occur on more than 52 days in any one year
4. Each trader will provide an additional bin for use by the customers
5. At the end of trading each day on which they trade, the traders will undertake a litter sweep of the immediate vicinity of the street trading space.
6. All traders are to operate within the curtilage of the Premises

That the panel grant the street trading consent for The Crown, Marcham, subject to the standard street trading consent conditions and the additional following conditions:

1. Between the hours of 12 (midday) and 9pm, any trading permitted by this licence shall not exceed five hours.
2. Trading shall not occur on more than four days in any one week
3. Trading shall not occur on more than 200 days in any one year
4. Each trader will provide an additional bin for use by the customers
5. At the end of trading each day on which they trade, the traders will undertake a litter sweep of the immediate vicinity of the street trading space.
6. All traders are to operate within the curtilage of the Premises

The meeting closed at 1.52 pm