

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

10.00am 21 DECEMBER 2010

COMMITTEE ROOM 1, BRIGHTON TOWN HALL

MINUTES

Present: Councillor Simson (Chairman); Kitcat and Marsh

Officers: Sarah Mcnaught (Licensing Officer), Sarah Cornell (Licensing Officer), Rebecca Sidell (Lawyer) and Caroline De Marco (Democratic Services Officer).

PART ONE

87. TO APPOINT A CHAIRMAN FOR THE MEETING

87.1 Councillor Simson was appointed Chairman for the meeting.

88. PROCEDURAL BUSINESS

88a Declarations of Substitutes

88.1 There were none.

88b Declarations of Interests

88.2 There were none.

88c Exclusion of the Press and Public

88.3 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(1) of the Act).

88.4 **RESOLVED** – That the press and public be not excluded.

89. GO LOCAL, 93 NORTH ROAD, BRIGHTON: APPLICATION TO VARY EXISTING PREMISES LICENCE

- 89.1 The Panel considered a report of the Head of Environmental Health and Licensing regarding an application for a variation of a Premises Licence under the Licensing Act 2003 for Go Local, 93 North Road, Brighton.
- 89.2 The applicant attended the hearing with his representative Mr Simmonds to make representations in favour of the application. Ms Crowhurst, Councillor Deane, Inspector Harris, Ms Irving, Head of Licensing Sussex Police and Mr Savill, barrister for Sussex Police, attended the hearing to make representations against the application.
- 89.3 The Licensing Officer outlined the application. Representations had been received from a Residents' Association, a local Councillor and Sussex Police. The representations had expressed concerns relating to Prevention of Crime and Disorder, the Special Stress Area, Prevention of Public Nuisance and Protection of Children from Harm. There was no history of problems regarding the licence. The premises was in the Special Stress Area.
- 89.4 The Licensing Officer quoted paragraph 2.4.12 of the Brighton & Hove Licensing Policy. "New and varied applications for premises and club premises certificates within SSAs will not be subject to the presumption of refusal, but operators will be expected to pay special attention when drawing up their operating schedules and to make positive proposals to ensure that their operation will not add to the problems faced in these areas." The Licensing Officer also quoted paragraph 2.6 of the Licensing Policy which stated "Shops, stores and supermarkets which provide alcohol for consumption off the premises: the normal scenario will be to provide for sales of alcohol at any time when the retail outlet is open for shopping unless there are very good reasons for restricting those hours."
- 89.5 Mr Savill set out the representation from Sussex Police. He referred to the letter of objection from Sussex Police dated 1 November 2010 and the statement and log of Police Officer Jameson. There had been three incidents in this area.
- 89.6 Mr Savill stated that the application was for a significant increase in hours for which alcohol could be sold. This was for an extra three hours a day, seven days a week. The council's policy relating to Special Stress Areas was set out in paragraphs 2.4.12. and 2.4.13. The policy expected applicants to pay special attention to the Special Stress Area and to advance positive proposals to ensure that their operation would not add to the problems faced in these areas.
- 89.7 Mr Savill stated that Sussex Police considered that it was in the Special Stress Areas where the problems experienced were more acute than the non policy areas. The problems experienced were serious for the people who lived in and visited the area. The Panel was entitled to refuse the licence. There was no evidence of large scale problems attributed to the premises. Special Stress was not about problems caused by a particular premises. It was about the accumulation of licensed premises in a particular area. This was demonstrated by PC Jameson's statement, which outlined drunkenness, and disorderly behaviour due to the availability of alcohol.

- 89.8 Mr Savill considered that extending further the hours for which alcohol was available in the Special Stress Area would only add to the accumulation of problems in the Special Stress Area. The Police considered that the application should be refused.
- 89.9 Inspector Harris highlighted the problems that were being experienced by residents in the North Laine area. The residents' number one concern was drunkenness & noise. A licence to 02.00 hours would cause problems for the police. This would be another opportunity for people to buy alcohol and take it onto the street. Street drinking was causing dispersal problems. When people drank they became loud. Residents did not want to get up to make an entry in a noise diary at 01.00 hours.
- 89.10 Inspector Harris explained that the police were seeing an increase in violent crime in this area. Beat 4 was the second crime area in the city. 50% of all violent crime was linked to alcohol.
- 89.11 Inspector Harris noted that the applicant had offered a door supervisor on Friday and Saturday nights from 23.00 hours. This did not address the rest of the week. Although this would control what happened in the premises it would not control the noise in the street. Mobile door supervisors would be helpful but this was reactive and would not prevent problems that might occur. The statement of PC Jameson explained the problems in the local area.
- 89.12 Councillor Deane set out her representation. She had been actively involved with the North Laine Community Association for four years. The key issue was anti-social behaviour related to alcohol. This was happening all hours of the day and night.
- 89.13 Councillor Deane referred to Section B of the operating schedule (crime and disorder) which was blank. Meanwhile measures set out in Section A would not help outside the vicinity of the premises. She stressed that with off licences, alcohol could be bought up to 02.00 hours but could be consumed hours afterwards. The applicant could not control crime and disorder relating to alcohol sold on the premises. The premises was within the special stress area and close to open spaces such as the Broughthelm Centre gardens and Victoria Gardens.
- 89.14 Ms Crowhurst set out the representation of the North Laine Community Association. The application was in the North Laine within the Special Stress Area. There was a concern about late night noise and damage to property. The problems were getting worse and she was worried about the residents in the upper part of the building above the shop. There were many people living in the apartment building (the old Argus building, now loft apartments). Residents had not expected an extension to the licence. Residents were living above 90% of the shops and properties in the North Laine area.
- 89.15 Ms Crowhurst mentioned that the police statistics showed a continuous problem in the area. The residents wanted prompt action by the police but this could not always be forthcoming. One in five premises in the North Laine was licensed. There were 60 plus outlets. This was of great concern. There were more and more late night variations.
- 89.16 Ms Crowhurst stated that the noise and vandalism experienced by residents had affected the quality of their lives. Residents were concerned that there could be more people using the shop and causing more problems between 23.00 and 02.00 hours

- 89.17 Councillor Simson asked if there were problems before 2005 when the Licensing Act came into effect. Ms Crowhurst replied that there had always been isolated problems. She confirmed that there was a problem with people passing through the area but did not believe this was caused by residents.
- 89.18 Mr Simmonds asked Councillor Deane if she acknowledged that the large number of conditions on the licence were good practice. These were set out on pages 14 and 15 of the agenda. Councillor Deane replied that it would be difficult to monitor the effect of what was sold in the store. People could create a nuisance elsewhere. There were problems in the area which went on beyond 02.00 hours.
- 89.19 Mr Simmonds set out the case for the applicant. The application was for an extension of hours. The application was being made as the applicant had identified a need for his customers. It was driven by business demands. The premises was almost a mini supermarket. It sold a range of fresh food and groceries, cold and prepared food and alcohol. Alcohol sales formed 20% of the total sales of the store. The rest was good quality food. Alcohol was sold at the rear corner of the store. Some alcohol was sold behind the counter.
- 89.20 Mr Simmonds stated that there was no suggestion from the police that this premises was causing problems. The Brighthelm gardens were approximately 200 yards away. The applicants had a good record of refusing underage customers. Mr Simmonds referred to conditions in existence on the licence set out on pages 14 and 15 of the agenda. They were conditions of good practice. The applicants operated the Challenge 25 policy. They had a refusals register and had good training for staff. Some staff lived above the shop.
- 89.21 Mr Simmonds stated that he did not believe that an extension from 23.00 to 02.00 hours required further conditions other than those already approved. The mobile security unit and the door supervisor were an addition. It was felt that on Friday and Saturday nights a door supervisor could assist as an extra member of staff to ensure people causing problems could not come into the shop. There was no record of problems for the premises. It did not sell cheap alcohol. The applicants were keen to work with the community.
- 89.22 Mr Simmonds stated that the applicant had spoken to customers about problems in the area and they felt that Brighton was generally noisy. North Road was a main road with heavy traffic. The extension of hours would allow the premises to trade to its benefit. The applicant said that the vast number of clients who came into the shop bought a wide range of food and drink. Alcohol was not usually sold on its own. In addition, the premises supplied a number of other premises in the area. However it did not sell alcohol to other licensed premises. Alcohol was not discounted or offered as an incentive. The applicants advertised the fact that if customers bought a large amount of food they would get a discount on alcohol.
- 89.23 The applicant had had no problems with Trading Standards. The prices of goods were in excess of other stores in the area. The applicant wanted to maximise business by having the licence extended to 02.00 hours throughout the week. Mr Simmonds commended the application to the Panel. The applicant was operating a responsible premises in the Special Stress Area. The premises did not contribute to problems in the

area. The premises encouraged customers who were responsible and drank sensibly. He asked the Panel to grant the licence.

- 89.24 In answer to questions, Mr Simmonds agreed that as alcohol sales formed 20% of the total sales of the store, it would be possible to extend the opening hours to 02.00 hours without selling alcohol. However, there were problems with opening the store without selling alcohol. They would have to consider how to cover up or remove alcohol from shelves during the prohibited periods. It would be easier to control if alcohol was sold at all times the store was open.
- 89.25 Mr Simmonds stressed that the applicant would not necessarily always trade until 02.00 hours.
- 89.26 The applicant was asked who the shop was aiming to serve between 23.00 and 02.00 hours. He replied that restaurants and pubs bought fruit and vegetables from the store. The store served visitors and a lot of people who worked late. The store ran another premises in Hove. The sales of alcohol were 20% in term of profit and sales.
- 89.27 Mr Simmonds confirmed that the nearest off licence was in Queens Road at the back of the quadrant. It operated 24 hours a day. Many people used the store after 22.00 hours. They bought newspapers, and food, and the store served pubs and restaurants. The applicant considered that a large proportion of his customers were local residents and that 90% came on foot. He confirmed that the premises only provided food to local restaurants and pubs.
- 89.28 The Licensing Officer gave her closing observations. The premises was situated in the Special Stress Area, which was recommended for further monitoring. She stressed that commercial demand was not a matter for licensing. Conditions should be clear, precise and enforceable.
- 89.29 Mr Savill gave his closing observations on behalf of Sussex Police. The application was in the Special Stress Area. The applicant should be putting forward positive proposals to ensure that his operation would not add to the problems faced in this area. The concerns of Sussex Police were based on hard evidence. The problems in the area were good reason to depart from the usual practice of having alcohol hours at the same time as the premises opening hours. The Panel would need to consider if the grant of the variation promoted the licensing objectives. If granted, would the variation worsen problems or lessen them? The police believed the variation would not promote the licensing objectives and they asked the Panel to refuse the application.
- 89.30 Councillor Deane gave her closing observations. She stated that the police and residents had made a strong case for refusal. She did not believe that it was possible to prove that alcohol bought from the store would be consumed responsibly. Residents were living in close proximity to the premises.
- 89.31 Ms Crowhurst, gave her closing observation on behalf of the North Laine Community Association. She stated that she could not accept that customers needed to buy alcohol after 23.00 hours. The grant of the variation would add to the problems in the area. Ms Crowhurst could not understand how the applicant could prove that all customers were

local residents. She stressed that not all outlets in the area were open late at night. The outlets in Jubilee Street had to close at 23.00 hours.

89.32 Mr Simmonds gave his closing statement. He acknowledged that there were problems in the area occurring 24 hours a day. The premises had demonstrated that it could operate within those problems and would promote the licensing objectives. The most practical solution was to sell alcohol during opening hours. With regard to hours, Mr Simmonds stressed that it was possible that the applicant would not always want to open to 02.00 hours. Should the Panel agree to extend the hours he requested that the hours for the sale of alcohol should be the same as the opening hours, which would be in line with the Council's current policy. He requested that the Panel grant the variation.

89.33 **RESOLVED** - The Panel have listened carefully to those making representations. The Panel have no reason to think that this operation is not a responsible trader. That is not what is being questioned here. What the Panel have to consider is whether by increasing the licensable hours it will promote the Licensing Objectives.

This premises falls within the City's Special Stress Area and so requires special consideration when reaching a decision.

The Panel have heard from both the Police and local residents that this area does suffer from problems of late night disturbance and crime.

The Panel feels that extending the hours would add to the problems and that no measures by way of additional conditions on the licence would mitigate this.

The Panel is therefore refusing the application because they do not feel it will promote the Licensing Objectives.

The Panel solicitor reminded the parties of their appeal rights to the Magistrates Court under the Licensing Act and that appeals must be made within 21 days of written notification of the decision given at the hearing.

90. SAINSBURY'S UNIT 1,134-138 NORTH STREET, BRIGHTON: APPLICATION FOR A NEW PREMISES LICENCE

90.1 The Panel considered a report from the Head of Environmental Health and Licensing regarding an application for a New Premises Licence under the Licensing Act 2003 for Sainsbury's, Unit 1, 134-138 North Street, Brighton.

90.2 The applicants attended the hearing with their representative Mr Botkai to make representations in favour of the application. Ms Spicer, Mr Crowhurst, on behalf of Mr Skam, Ms Crowhurst on behalf of the North Laine Community Association, Councillor Deane, Chief Inspector Nelson, Ms Irving for Sussex Police, Mr Savill, barrister for Sussex Police, attended the hearing to make representations against the application.

90.3 It was established that the application was in the St Peters and North Laine Ward and not in Regency Ward as stated on the agenda.

- 90.4 Mr Botkai, solicitor for the applicants questioned why Chief Inspector Nelson was in attendance and made the point that they had not been given advanced warning of his attendance. The Panel solicitor replied that it stated in the hearing regulations that the police could attend the Panel. Mr Savill stressed that the police could bring whoever they wished to represent them.
- 90.5 The Licensing Officer outlined the application. The premises was situated in the Cumulative Impact Area and 5 representations had been received from local residents, a Residents' Association, a local Councillor and Sussex Police. The representations had expressed concerns relating to Prevention of Crime and Disorder, Cumulative Impact and Prevention of Public Nuisance. The premises was in the Cumulative Impact Area where applications for new licences will normally be refused following relevant representations. This presumption could be rebutted by the applicant if they could show that their application would have no negative cumulative impact.
- 90.6 Mr Botkai, solicitor for the applicants informed the panel that they had amended the application last month. The hours for the sale of alcohol would now be 07.00 to 23.00 hours, and new conditions had been put forward.
- 90.7 The Licensing Officer confirmed that an email had been received from the applicants that stated that the application "may be amended" to the hours suggested above. The application set out in the agenda was the only one received by the council.
- 90.8 The applicants confirmed that they were amending their application for the sale of alcohol to 07.00 to 23.00 hours and there would be no application for late night refreshment. Additional conditions were set out on pages 46 and 47 of the agenda in an email dated 29 November 2010 from Robert Botkai.
- 90.9 Mr Savill set out the representation from Sussex Police. He referred to the letter of objection from Sussex Police dated 29 November 2010 on pages 60 and 61 of the agenda and the statement of Police Sergeant Siggs dated 23 November 2010 on pages 62 and 63 of the agenda.
- 90.10 Mr Savill stated that the police were still opposed to the licence. This was a case that engaged the Cumulative Impact Policy. Mr Savill quoted paragraph 13.29 of the Secretary of State's guidance issued under Section 182 of the Licensing Act 2003. "The effect of adopting a special policy of this kind is to create a rebuttable presumption that applications for new premises certificates or variations that are likely to add to the existing cumulative impact will normally be refused, following relevant representation, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives."
- 90.11 Mr Savill considered that the operating schedule did not address negative cumulative impact. The application therefore did not comply with the Secretary of State's guidance. The guidance included the number of premises in any given area. The Panel did not have to look to the problems directed to a particular premises. In this case, there was no track record of problems with selling alcohol. Mr Savill stressed that it was possible for any premises to contribute to negative cumulative impact without giving rise to problems in their own right.

- 90.12 Mr Savill stated that the premises were situated in an incredibly sensitive location. This was the reason the cumulative impact policy was implemented in the first place. The problems of cumulative impact over the course of the day were multi-faceted. Many of the problems that occurred related to alcohol and street drinking. This was an all day problem with which the police had to contend. There was an increased availability of alcohol earlier in the day, which would lead to people being in a drunken state in the early hours. There were already a significant number of existing outlets for alcohol to be bought and consumed in the area. There were an extraordinary number of licensed premises in the cumulative impact area (238).
- 90.13 Mr Savill stated that the view of the police was that no measures put forward would prevent negative cumulative impact.
- 90.14 Chief Inspector Nelson informed the Panel that he had strategic responsibility for licensing. He held Sainsburys in high regard. The objection was based on special concerns regarding the cumulative impact area and the density of off licences. There was a need to reflect on what had happened over the last few years. Drinking habits had changed. People pre-loaded and went wherever alcohol was available. There were now 238 off licences in the cumulative impact area. Some provided more affordable alcohol than others. Pre-loading was taking place during the day and the evening. The police and the community had to pick up the pieces.
- 90.15 Chief Inspector Nelson stressed the effect on the community of noise and drunkenness and the number of bottles deposited in bins and later used as weapons. He mentioned the Safe Place scheme which operated in the city centre. The availability of alcohol had a profound effect on the street drinking community. The representation was not about the capability of the retailer but about the impact and unacceptable risk of adding another licence to the 238 off licences in the area.
- 90.16 Councillor Marsh asked if the police were aware of the revised conditions and hours. Ms Irving replied that they were, but stressed that this was not a revised application. This was yet another premises that wanted to provide alcohol in the cumulative impact area which should remain intact. There was concern about the erosion of the policy.
- 90.17 Mr Botkai, solicitor to the applicants asked if there was a list of the 238 off licences. Ms Irving replied that they did not have a list to hand. She had seen the list as had Inspector Harris. The list showed live premises. Some were off licences only and some were on licences that were also off licenses. Approximately half were pubs. The Chairman stated that she was happy to accept the figure of 220 that was stated in the agenda.
- 90.18 Mr Botkai pointed out that Weatherspoons had been granted a licence 200 yards away. Ms Irving replied that that was an existing licence, amended with hours reduced.
- 90.19 Councillor Deane set out her representation. She stressed that Sainsburys had opened in a former retail premises in North Street without planning permission. She admitted that most supermarkets sold alcohol. However Sainsburys had opened first and then asked for permission. There was an assumption that the application would be approved. There were huge differences between off licence and on licence sales. With on licences there was control. Supermarkets were the primary source of cheap alcohol.

There were limits to how Sainsburys could control the consumption of alcohol bought in the premises.

- 90.20 Ms Deane explained that residents were suffering the effects of the relaxation of the licensing laws. The effect was irresponsible drinking 24 hours a day. The North Laine Community Association had not been consulted on the possible impact of siting the store in the North Laine. The Clock Tower had been improved with a seated area, but this could lend itself potentially to the consumption of alcohol. It was an accident hot spot, which put lives at risk. Residential properties were close by North Street, and residents felt the affect of irresponsible drinking.
- 90.21 Mr Crowhurst set out his representation. He was speaking on behalf of Mr Skam. He asked the Panel to reject the application as it was likely to add to crime and disorder. The application was in the cumulative impact area and adjacent to the special stress area. There were now four off licences in North Street. He had a list of 60 premises selling alcohol in the North Laine. The Licensing Panel had recently rejected an application 2 minutes away from Sainsburys in the North Laine.
- 90.22 Mr Crowhurst considered that the application would add to negative cumulative impact and quoted paragraph 2.4.4 of the council's licensing policy. The steps outlined in the operating schedule did nothing to mitigate cumulative impact. He accepted that Sainsburys was a well run store. However Mr Crowhurst stressed that once people had left the store they were no longer Sainsbury's concern, but the concern of the residents.
- 90.23 Mr Crowhurst stated that the residents were already inconvenienced by late night deliveries and late night noise was the main problem to residents in the North Laine. Late night noise was such a problem that it was recently the only item on the North Laine Local Action Team meeting. Mr Crowhurst considered that people buying alcohol were likely to be going on elsewhere and may have already been drinking.
- 90.24 Ms Spicer set out her representation. She explained she lived in one of the apartments above the shops in the block that included Sainsburys. Ms Spicer spoke about problems of vandalism including people setting off the fire alarm in Winsor street on a number of occasions leading to residents being evacuated from the building. Residents no longer bothered to evacuate. Ms Spicer explained that the external door and garages were in Portland Street. People were in the street all day long eating and drinking. People urinated and some defecated behind the bins. Bottles and cans were left in the street.
- 90.25 Ms Spicer explained that when the Weatherspoon premises closed in North Street, there was a decrease in noise. If the Panel were minded to grant the application, Ms Spicer asked the Panel to look at the hours. All the other retailers had fewer hours. She asked Sainsburys to have similar hours to stores like Waitrose and Marks and Spencer.
- 90.26 After a short recess the Mr Botkai set out the case for Sainsburys. He stressed that the application had been changed to new hours for the sale of alcohol which would now be 07.00 to 23.00 hours. New conditions had been put forward. Mr Botkai considered that the council had set an impossible policy. He referred to paragraph 2.4.8 of the policy and stated that it was not absolute. The circumstances of each case should be

considered. If it was not likely to add to the cumulative impact the application should not be refused.

- 90.27 Mr Botkai stated that the Co-op in North Street opened from 07.00 to 23.00 hours. If someone wanted to buy alcohol they could go to the Co-op or any other store in the area. All Sorts in North Street was open 24 hours a day and other licences had hours of 06.00 to midnight. There was no evidence that Sainsburys would add to negative cumulative impact. If Sainsburys sold alcohol it would give customers a choice and would not increase drinking. The danger of having a cumulative impact area was that it restricted trading and good operators coming onto the market.
- 90.28 Mr Botkai reported that the applicants wished to further amend their application so that the hours for selling alcohol would now be 09.00 to 21.00 hours. This was a major concession. Between 07.00 and 09.00 hours, little alcohol was sold, and the alcohol would be shuttered off. As there was a problem with pre-loading after 23.00 hours, Sainsburys wanted to demonstrate that it was a good operator who worked with the community and the police. 21.00 to 23.00 hours was the time people were likely to be moving from pubs to clubs. Sainsburys wanted to prove it could trade responsibly. It was possible that Sainsburys might come back with another application for longer hours in the future but the Panel would then have evidence. If there were problems the applicants were unlikely to secure an extension of the licence.
- 90.29 Mr Botkai referred to the Co-op in North Street. He pointed out that Sainsburys did not advertise alcohol outside and would be content with a condition to that effect. He agreed with the police that there should be no alcohol near to the entrance of the store as there was with the Co-op. Sainsburys agreed not to sell high strength alcohol such as lagers and ciders as the Co-op did.
- 90.30 Mr Botkai stressed that the sale of alcohol was important to a Sainsbury's store. He recognised that pricing was a complicated area. Sainsburys had two national pricing policies. He hoped the Panel would consider that Sainsburys could trade sensibly and responsibly. Sainsburys offered a choice to customers who could decide whether they wanted to use Sainsburys or the Co-op. The conditions attached to the licence protected the local community. There would be an electronic refusal system in the store, and people could be banned from the store. Sainsburys had already joined the Brighton & Hove Business Crime Reduction Partnership.
- 90.31 Mr Botkhai made the point that noise from bottles could be made with non alcoholic bottles. There were many clubs and pubs in the area. People could pre-load at any time. With regard to the problems experienced with neighbours, Sainsburys were happy to meet with residents and traders to discuss problems in the area. Sainsburys would work in partnership with the authorities. They had listened to concerns and were sensitive to the community. If the application was granted and there were problems as a result, there could be a review.
- 90.32 Mr Botkai confirmed that Sainsburys had applied for a number of licences in cumulative impact areas and most had been successful. Sainsbury's Stores in cumulative impact areas did not cause problems.

- 90.33 Councillor Simson asked Mr Botkai how the store would manage the sale of alcohol if the Panel was minded to grant a licence from 09.00 to 21.00 hours. Mr Botkai replied that the store would use shutters and screens, and set tills so they refused transactions during the period when sales of alcohol was not permitted. The store would be open from 07.00 to 23.00 hours. 10% to 12% of the total stores sales would be alcohol.
- 90.34 In answer to further questions Mr Botkai informed the panel that Sainsburys had national pricing offers on alcohol sales. There were price reductions but not “buy one get one free” sales.
- 90.35 Councillor Kitcat asked if Sainsburys had consulted the community before applying for the licence. Mr Botkai replied that they had written to residents but had not specifically mentioned licensing. Councillor Kitcat asked about the layout of the alcohol and the Mr Botkai replied that there would be no alcohol displayed near the entrance to the store, and that this was Sainsbury’s policy. Councillor Kitcat stated that he had seen alcohol displayed near the entrance of a Sainsbury’ Local store in Brighton. Mr Botkai replied that the store manager in the Western Road, Brighton store had allowed alcohol to be displayed near the door. This needed to be removed.
- 90.36 Mr Botkai considered most problems in the area would occur after 23.00 hours. He accepted that the cumulative impact policy did not attribute certain hours of the day to the policy. In answer to a question about street drinking, Mr Botkai stated that street drinkers wanted high alcohol intake. Sherry was their item of choice. This item could be kept behind the counter.
- 90.37 Ms Irving asked why Sainsburys had not applied for a provisional statement as this was a cumulative impact area. Mr Botkai replied that he was not instructed to apply for a provisional statement and in his opinion they did not work, and were a poor piece of drafting.
- 90.38 Mr Crowhurst asked if the applicants considered there was any evidence to suggest that another premises selling alcohol would not add to the volume of alcohol sold in the area. The applicants replied that if someone wanted to buy alcohol they could go to the Co-op or any other premises. Sainsburys wanted to supply alcohol to their customers who shopped in their stores and wanted to buy alcohol.
- 90.39 The Licensing Officer gave her closing observations. The Cumulative Impact Policy was in place due to problems of crime and disorder in the area. The Panel needed to consider whether the applicants had demonstrated that they would not add to the negative cumulative impact. If they had not demonstrated that they would not add to the negative cumulative impact then the Panel should consider refusal.
- 90.40 Mr Savill gave his closing observations on behalf of Sussex Police. Each case should be considered on its own merits. Sussex Police did not object to every single application in the cumulative impact area. The police objected when they considered it right to do so. The applicants when presenting their case had suggested the Panel should grant and see. That suggestion was superficially attractive but dangerous. If the application was granted and it caused negative cumulative impact it would not be possible to prove the problem was down to this premises. The Panel could not grant the

licence and expect the evidence to be available in six months time. This was potentially another licence in the cumulative impact area.

- 90.41 The Panel would need to take into account the Secretary of State's guidance and the council's own policy. The Secretary of State's guidance had special sections on cumulative impact. There was no good reason to part from that guidance. If the Panel did take the policy into account, then they should take into account the presumption of refusal.
- 90.42 Mr Savill considered that the Panel should ask themselves if this premises would be a significant source of alcohol. The police believed it would be a significant source of cheap alcohol. Mr Savill referred to the statement of Police Sergeant Siggs dated 23 November 2010. A large amount of alcohol was consumed in the area. The Panel needed to ask if the applicants had demonstrated that if the application was granted there would be no negative cumulative impact. The applicants had to prove that there was no negative cumulative impact and the police believed that they had not been able to demonstrate this.
- 90.43 Mr Savill remarked that the applicants seemed to suggest that the Panel could be satisfied that there would be no negative impact as alcohol was already available in the area. If this argument was right it would mean that the council would never refuse an application in the cumulative impact area again and the policy should be torn up.
- 90.44 Mr Savill stressed that this was an incredibly sensitive area. Alcohol fuelled problems of all kinds. He asked if it would promote the licensing objectives to grant a licence to a premises which would be the source of cheap alcohol and which had not demonstrated that there would be no negative cumulative impact. Problems in the area were multi faceted. There were different aspects of the problem all through the day. People might start drinking in the morning and become a problem later in the day.
- 90.45 Mr Savill raised the issue of street drinkers and pre-loading. The problem was one of increased availability, not increased hours. The cumulative impact policy covered the whole of the day. He asked the Panel to consider whether the application had given them any reason to depart from their policy. Mr Savill thought the answer was no. He asked the Panel to refuse the application.
- 90.46 Councillor Deane gave her closing statement and urged the Panel to take on board what the police had put forward. The key word was cumulative. Every time the Panel granted a licence it added to the cumulative impact. She stressed that there was no control off the premises. Brighton & Hove was already saturated with licensed premises.
- 90.47 Mr Crowhurst, gave his closing statement on behalf of Mr Skam. He stressed that to grant a licence would make a nonsense of the council's policy on cumulative impact. Sainsburys had not demonstrated that it would not add to the cumulative impact. The North Laine was suffering from crime and disorder and disturbance. Such an application would add to the problems and cumulative impact. The applicants had spoken about giving customers a choice. One outcome of this would be lower prices. It would drive prices down. He asked the Panel to consider the effect of the grant of the licence on residents.

- 90.48 Mr Botkai gave the closing statement on behalf of the applicants. He stated that cumulative impact was a difficult area as the applicant was being asked to prove what would happen in the future. They could only argue what might happen in the future. Sainsburys was simply another supermarket selling alcohol. They wanted to meet the needs of customers who bought food and also wanted to buy alcohol. Sainsburys would do their best to ensure street drinkers would not acquire alcohol.
- 90.49 The applicants argued that the grant of the licence would not increase cumulative impact. The Co-op was the same size and there was no price war as far as Sainsburys was concerned. If there were problems a review could be sought. The Panel would need to look at the council's policy and the Secretary of State's Guidance. The applicants thought that cumulative impact considerations should not apply to off licences. The council's policy was not absolute and stated that the Panel should consider individual aspects of the case.
- 90.50 Mr Botkai stated that there were not 110 licences in North Street. He could only count 4. The applicants had made an offer to revise the application from 09.00 to 21.00 hours. He asked the Panel to let Sainsburys demonstrate that they could operate safely. He asked the Panel to grant the licence. The Panel would need to look at this application based on its merits. It was irrelevant what happened elsewhere. Sainsburys had not had any reviews elsewhere.
- 90.51 **RESOLVED** - These premises are situated in the Cumulative Impact Area and the Council's policy says at 2.4.4 that applications for new premises licences will normally be refused following relevant representations but this presumption can be rebutted by the applicant if they can show that their application will have no negative Cumulative Impact. The Council's policy specifically includes off licences.

The Panel recognises that the Council's special policy is not absolute and that the individual circumstances of each case must always be considered.

The Panel have carefully considered the representation made by the police and interested parties and also the measures and conditions put forward by the applicant including the amended hours proposed during the Panel hearing. The Panel have taken into account the conditions and good operating practices put forward and have no doubt that Sainsbury's is a reputable and responsible retailer.

The Panel however feels that the applicant has failed to demonstrate that these premises will not add to the problems of Cumulative Impact in the area.

It will be another premises selling alcohol in an already saturated area.

The Panel accept the evidence and concerns of the police, and local residents that problems relating to alcohol within the Cumulative Impact Area occur throughout the day, in particular the problems of street drinking, pre-loading and public nuisance.

The Panel do not feel that conditions would be effective in preventing these problems.

The Panel do believe that granting the application would undermine the Licensing Objectives relating to the prevention of Crime and Disorder and Prevention of Public Nuisance.

The Panel are therefore refusing this application.

The Panel solicitor reminded the parties of their appeal rights to the Magistrates Court under the Licensing Act and that appeals must be made within 21 days of written notification of the decision given at the hearing.

The meeting concluded at 2.36pm

Signed

Chairman

Dated this

day of