

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

10.00am 11 AUGUST 2011

COMMITTEE ROOM 1, BRIGHTON TOWN HALL

MINUTES

Present: Councillors: Deane, Marsh and Sykes

Officers: Tim Nichols, Head of Environmental Health and Licensing, Rebecca Sidell, Lawyer and Penny Jennings, Democratic Services Officer

PART ONE

57. TO APPOINT A CHAIRMAN FOR THE MEETING

57.1 Councillor Deane was appointed Chairman for the meeting.

58. PROCEDURAL BUSINESS

58a Declaration of Substitutes

58.1 There were none.

58b Declarations of Interest

58.2 There were none.

58c Exclusion of the Press and Public

58.3 In accordance with Section 100A of the Local Government Act 1972 ('the Act'), the Licensing Panel considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I of the Act).

58.4 **RESOLVED** - That the press and public be not excluded/excluded from the meeting during consideration of any item on the agenda.

59. REVIEW OF A PREMISES LICENCE: DHARNI STORES, 165-167 HANGLETON WAY, HOVE

- 59.1 The Panel considered a report of the Head of Planning and Public Protection seeking that they determine a request that of the Licence of Dharni Stores, 165 -167, Hangleton Way, Hove be reviewed under the Licensing Act 2003.
- 59.2 Mrs Irving was in attendance to speak on behalf of the Police in support of their representation made on the grounds of the Prevention of Crime and Disorder supporting the application submitted by Trading Standards seeking revocation of the licence. Miss Macbeth, was present to speak in support of her recommendation that consideration be given to revocation of the licence. No one was in attendance on behalf of the Licence Holders and before proceeding with the business of the meeting the Chair and Panel established and received confirmation that details in relation to proposed review and that mornings meeting had been properly served on all relevant parties in accordance with agreed procedures. The Clerk to the Panel confirmed that arrangements had been made to redirect anyone who had attended Hove Town Hall in error, checks had been made and confirmation received that no one was in transit between the two Town Hall Buildings.
- 59.3 Advice was sought from the Legal Adviser to the Panel who explained that although the licence holder(s) had the right of attendance the panel hearing could take place in their absence if they had not taken up that right. It could be demonstrated that that all necessary paperwork had been properly served. Having delayed the start of the meeting to allow for late attendance by the licence holders and to establish that all of the paperwork had been served correctly the Panel agreed to proceed with the meeting in the absence of representatives of the licence holders.
- 59.4 Mr Nichols, the Head of Environmental Health and Licensing gave the presentation on behalf of the licensing authority. He explained that an application had been received from Trading Standards to review the licence granted to the premises known as Dharni Stores, 165-167 Hangleton Way, Hove. The grounds for the review which was supported by the Police were the Prevention of Crime and Disorder and Protection of Children from Harm.
- 59.5 The Head of Environmental Health and Licensing explained that at the hearing the Panel needed to:
- Consider the application made in accordance with Section 51 of the Licensing Act;
 - Consider any relevant representations;
 - Take such steps (if any) as were considered necessary for the promotion of the licensing objectives. These steps were:
 - To modify the conditions of the licence
To exclude a licensable activity
 - To remove the designated premises supervisor from the licence for a period not exceeding 3 months,
 - To revoke the licence

For this purpose the conditions of a premises licence were considered to be modified if any of them was altered or omitted or any new condition was added. It might provide that the modification or exclusion had effect for a specified period not exceeding 3 months. The determination, if not completed at the hearing needed to be made within 5

days of the hearing. Such determinations did not have effect until after the appeal period or, if an appeal was lodged, until the appeal had been disposed of.

- 59.6 The Head of Environmental Health and Licensing explained that the recent licensing history of the premises was complex and outlined the position in order to provide clarity for Members of the Panel. Each application should be dealt with on its merits and whilst action taken would usually stop short of revocation for a first review this option was open to a Panel if it had been demonstrated that serious and multiple offences had taken place. Details were given of the circumstances set out in Paragraph 11.26 of the Council's Statement of Licensing Policy (SoLP) and Section 182 of the Secretary of State's guidance where revocation could be considered proportionate.
- 59.7 Ms Macbeth gave her representation in support of her application that the licence be reviewed. She referred to the submitted paper work which detailed the history of failed test purchases when alcohol and cigarettes had been sold to children. Trading Standards had received intelligence that alcohol was being sold to children and, therefore a test purchase operation had been conducted. The premises had failed test purchases as early as 2007. Warnings had been issued in order to rectify these shortcomings and to ensure that the refusals register was properly maintained.
- 59.8 Further intelligence was subsequently received which suggested that alcohol was being sold to children. On 25 February 2011 the premises had failed a second test purchase by selling four cans of lager to a child. At that time Mr Dharni had been unable to provide a copy of either part A or B of the premises licence as the paperwork had allegedly been sent to the Council to have the premises name changed. The CCTV system had four poor quality cameras, and the monitor did not work. No proof of age posters, either Challenge 21 or Challenge 25 were on display in the premises. Staff including Mr Dharni himself had seemed hostile and appeared to be unaware of the appropriate procedures. At that time super strength beers and ciders were on display along with a buy one get one free offer for wine. A number of suspected counterfeit spirits were identified on display. A subsequent meeting had been held with Inspector Harris to discuss this failure. Mr Dharni had been made aware of the possibility of review proceedings at a meeting held on 4 March 2011.
- 59.9 Since that time further visits had taken place and on 24 June Police licensing officers had met Mr Tierri Gobeil who had introduced himself as the new manager of the premises, advising that the premises was under new management and that Mr Dharni was no longer contactable or the DPS of the premises. Mr Gobeil had stated that he had applied for an alcohol licence and was due to attend a DPS training course on 27 June 2011. A further visit had been paid to the premises on 26 June 2011 by police licensing officers. Mr Gobeil had confirmed at that time that Mr Antonello Cavallaro had purchased the business and that a Mr Fahran Haosbani was the new DPS. Mr Gobeil stated that they had taken over the business on 29 May 2011. No alcohol was on display in the shop at that time. A further visit had taken place on 27 June 2011 to advise Mr Gobeil that the Council had not received any of the necessary paperwork in relation to changing the premises licence holder or DPS, no alcohol was on display at the premises at that time and those present at the premises had been advised that none could not be displayed until or unless the necessary paperwork was in place. Paperwork had been received on 29 June, putting a Mr Salvatore Capuano forward as the new DPS. The Police had objected to Mr Capuano being the new DPS. It had been

established that Mr Antonello Cavallaro was a 19 year old Italian national living in Italy. He spoke no English and it did not appear that he had ever left Italy. Details of the counterfeit alcohol and alcohol and cigarettes on which duty had not been paid had been provided to Members separately and were exempt from disclosure to the public. It had been established that Mr Dharni no longer had any involvement with the premises.

- 59.10 Councillor Deane, the Chair sought further clarification regarding the precise sequence of events and the up to date position in relation to the current licence holder. All three Panel Members sought further clarification in relation to the circulation of counterfeit alcohol in the city. Ms Macbeth stated that there was a problem in the City with premises selling illegal alcohol, with issues concerning suspected counterfeit alcohol being first identified at these premises during the failed test purchase on 25 February 2011. Illegal alcohol included counterfeit alcohol, non duty paid alcohol (smuggled or diverted), incorrectly described alcohol, incorrectly labelled alcohol and alcohol which had incomplete or no traceability. As a result Trading Standards had been working in partnership with H M Revenue and Customs and Sussex Police to tackle the problem and had seen a progression in the tactics being used in order to introduce illegal alcohol to the market. In view of the serious crime associated with the premises and in line with the approach suggested by the Secretary of State's guidance the Panel were requested to consider revocation of the licence.
- 59.11 Mrs Irving spoke on behalf of the Police stating that she had little to add to the comments made by Ms Macbeth. There had been clear breaches of the licence by successive incumbents at the premises and the licensing objectives had been severely and repeatedly compromised. Both Trading Standards and the Police had visited the premises on numerous occasions and had provided guidance as to how the premises should be run, this guidance had been ignored, training had not been carried out as agreed and the licensing objectives relating to the Prevention of Crime and Disorder and the Protection of Children from Harm had not been upheld, in fact they had been severely compromised. In view of the serious nature of crime associated with the premises, the Police supported the request for revocation of the premises licence sought by Trading Standards.
- 59.12 There were no further questions and Mr Nichols therefore made the closing presentation on behalf of the licensing authority. He re-iterated his earlier remarks in relation to Paragraph 11.26 of the SoLP and the Secretary of State's guidance in instances where serious offences had been identified.
- 59.13 Ms Macbeth confirmed in making her closing submission that notwithstanding changes to the DPS and Licence holder of the premises, serious illegal activity had continued to be associated with the premises and in consequence Trading Standards were requesting that consideration be given to revocation of the licence.
- 59.14 In making her closing remarks Mrs Irving reiterated the support of the Police for request for the revocation of the licence sought by Trading Standards.
- 59.15 The Panel stated that they considered it regrettable that the licence holders or their representatives had not attended that morning's hearing as it would have given them opportunity to ask questions or seek clarification on various matters. However,

notwithstanding that the Panel were in agreement that they had sufficient information before them to determine this matter.

- 59.16 The Chair stated that the Panel had heard this review in the absence of the licence holder, having satisfied itself that all papers were properly served. The Panel had read the detailed paperwork submitted and had listened carefully to the representations put forward and considered the various options available in coming to their decision on this review application.
- 59.17 The Panel had heard evidence from both Trading Standards and Sussex Police of serious multiple offences relating to the sale of alcohol to underage children, counterfeit alcohol and smuggled cigarettes and alcohol. It was apparent that these activities had been conducted at the premises for a considerable period of time. Despite transfers of the licence the Panel still had concerns, as there was clear evidence that links remained between the current management and the activities that continued to cause concern.
- 59.18 The Panel had considered the Section 182 Guidance given by the Secretary of State and in particular Paragraph 11.26 relating to criminal activity in connection with licensed premises, in which the Secretary of State contemplated that, in certain circumstances, revocation of a licence should be seriously considered even in the first instance. This was also consistent with the Council's own "Statement of Licensing Policy".
- 59.19 In these circumstances, the Panel had decided to revoke the licence as this was necessary to promote the licensing objectives in relation to crime and disorder and the protection of children from harm.
- 59.20 **RESOLVED** – That the licence held by Dharni stores, 165 – 167 Hangleton Way, Hove be revoked for the reasons set out above.

Note : The Legal Adviser to the Panel confirmed that the Licence holders would receive notice of the Panel's decision in writing with details of their appeal rights attached.

The meeting concluded at 12.15pm

Signed

Chairman

Dated this

day of