

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

**10.00am 20 DECEMBER 2011**

**COMMITTEE ROOM 3, HOVE TOWN HALL**

**MINUTES**

**Present:** Councillors; Deane, Cobb and Pidgeon

**Officers:** Sarah-Jane McNaught, Licensing Officer, Jean Cranford, Licensing Manager, Rebecca Sidell, Lawyer and Ross Keatley Democratic Services Officer.

**PART ONE**

**103. TO APPOINT A CHAIRMAN FOR THE MEETING**

Councillor Deane was appointed Chair for the meeting.

**104. PROCEDURAL BUSINESS**

**104a Declaration of Substitutes**

There were none.

**104b Declarations of Interest**

There were none.

**104c Exclusion of the Press and Public**

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).

**RESOLVED** - That the press and public not be excluded from the meeting.

**105. WINE ME UP - APPLICATION FOR A VARIATION**

- 105.1 The Panel considered a report of the Head of Environmental Health and Licensing for an application for a variation of a premises licence for Wine Me Up, 7 Lewes Road, Brighton. In attendance were the Premises Owner Mr Daldeniz, the DPS Mr Ozturk and their agent Mr Hopkins. Councillor Pete West attended to make a representation against the application.
- 105.2 The Licensing Officer, Sarah-Jane McNaught, provided an overview of the application. The premises was in neither the Cumulative Impact Zone nor the Special Stress Area, and the application was seeking a variation of the existing licence from 0000 to 0100 Sunday to Thursday and to 0200 Friday and Saturday. The original premises licence had been granted in June 2010, and at this time the Police had made an objection and additional conditions had been added to the satisfaction of both parties. In relation to the variation it was highlighted that no representations had been received from the Police or Environmental Health; the single representation from Councillor Pete West made reference to the *Public Nuisance* and *Crime and Disorder* Licensing Objectives. Section 4.8 of the Councils Statement of Licensing Policy was highlighted to argue the premises was situated in a residential area.
- 105.3 The Chair invited questions for the Licensing Officer. There were none.
- 105.4 The Chair invited Councillor West to set out his representation. Councillor West highlighted that there were already problems in the Lewes Road area with public nuisance and crime and disorder. The Council had recently included Lewes Road in the Special Stress Area; however, the application had been made before the new policy came into effect, and this demonstrated the direction of Council policy in this area. Councillor West used the example outlined in Section 4.8 of the Licensing Policy to argue that Lewes Road should be treated as a residential area and, as such, premises should be licensed with terminal hours of 2330. Councillor West stated it was unfortunate there were no representations from local residents, but it was his opinion that there was an interest in these issues from the local community, and if granted the later hours would attract more trouble to the area. Councillor West went on to note that there was inconsistency in the approach taken by the Police.
- 105.5 The Chair invited questions from the Panel for Councillor West. In response to a query it was confirmed that the premises was part of a small cluster of shops with housing across the road. The applicant also confirmed that there was a pub further north on Lewes Road near to the premises.
- 105.6 The Chair invited the applicant to set out their case to the Panel. The agent, Mr Hopkins, spoke on behalf of the applicant, and explained that the applicant owned a number of premises in the city, and had a good working relationship with local Police. The area was a mixed residential area that was predominantly student based. The application had received no representations from Responsible Authorities, and it was highlighted that it was common practice for the Police to make representations on new premises licence applications but not object if the premises applied for a reasonable variation and had no history of problems.

The Premises had a CCTV system, and ensured there were two members of staff on the shop floor during the busier hours on Fridays and Saturdays. There were other off-licences in the area that closed at 0300; the application was to meet the needs of the

local student population. Mr Hopkins argued that the points made by Councillor West, in relation to public nuisance and crime and disorder, were speculative as there was no evidence to link any such problems to the premises. Mr Hopkins stated that on the visit he had made to the area he had observed that most of the population were students, and the area was mixed residential and commercial; it was his observation that the premises was situated on a busy transport route with a pub approximately 100m away. This was an application for a modest increase to the current licensed hours in a premises with no history of problems, and this was reflected by the absence of representations from any Responsible Authorities.

- 105.7 The Chair invited questions from the Panel for the applicant. It was confirmed that staff did not generally leave the premises on their breaks during the busier Friday and Saturday periods. Staff at the premises had attended training sessions run by Trading Standards. New staff were trained at the commencement of employment, and refresher training was provided; a training record was also held.
- 105.8 The Premises Licence Holder confirmed the whole of the premises was licensed for the sale of alcohol to allow flexibility in the layout of the shop floor.
- 105.9 The Premises Licence Holder and the DPS were aware of the nuisance problems that could potentially be caused by students, and the premises displayed noise notices to attempt to mitigate any such problems.
- 105.10 The Chair invited questions from Councillor West to the applicant. Mr Hopkins confirmed he had based his observations on the Lewes Road area on a single visit and local information he had received from a taxi driver, which he believed was offered in good faith. Councillor West argued that a single visit would limit observations of the area and stated that there were many families in the area who would not consider it to be a student area.
- 105.11 The Chair asked for summaries.

The Licensing Officer highlighted the hours of variation set out in the report.

Councillor West highlighted that there were a large number of students in the area as well as families and other long term residents. The proposed extension to 0200 would take the premises into late hours and would draw more people into the area creating potential problems in relation to public nuisance and crime and disorder.

Mr Hopkins stated that the Premises Licence Holder would be willing to reduce the hours of application to 0100; but highlighted that there were nearby premises that operated well beyond these times. It was highlighted that this was a well run premises and the application for a variation would not increase problems in the area.

- 105.12 The Panel retired to make their decision.
- 105.13 **RESOLVED** - The Panel had listened very carefully to the arguments put forward, and noted there had been no objections from individual residents, the Police or other Responsible Authorities to the application.

The applicant had demonstrated that they undertook regular training, and took steps such as signage and CCTV to discourage antisocial behaviour.

The Panel was prepared to accept the terminal hour of 0100 as proposed by the applicant with the exception of Sunday which they considered should have terminal hour of 0000.

In addition *Condition 2) at Annex 2)* of the licence, that two members of staff be on the premises from 2100 to 0000 Fridays and Saturdays, be amended to 0100 to reflect the variation to the hours of licensable activity.

The Panel stated this was consistent with the current Licensing Objectives.

## 106. ROLYN'S NEWS REVIEW COMMITTEE REPORT

- 106.1 The Panel considered a report of the Head of Planning and Public Protection for an application for a review of a premises licence for Rolyn's News, 57A North Road, Brighton. In attendance was the applicant, Catriona MacBeth Fair Trading Officer, Trading Standards, the Premises Licence Holder Mr Mina Bashir, the DPS Mrs Dina Abadir and their agents Mr Andy Grimsey and Mr Doug Simmons. Inspector Apps attended to make a representation in support of the application.
- 106.2 The Licensing Manager, Jean Cranford, provided an overview of the application. The premises was a small newsagent and off-licence. The application for review had been made by Trading Standards following the seizure of counterfeit and non-duty paid alcohol. One representation in support of the application had been received from Sussex Police. The options available to the Panel were highlighted, and their attention was drawn to Annex A of the Councils Statement of Licensing Policy in relation to '*Problem Premises on Probation*' – *red and yellow cards: how it would work*'.
- 106.3 The Chair invited questions for the Licensing Officer. There were none.
- 106.4 The Chair invited Ms Macbeth to set out the grounds of the application for review. Problems with sale of counterfeit and non-duty paid alcohol existed across the city; the first visit to the premises had taken place in June 2011 when it had been observed that 70cl bottles of vodka were being sold at a price only marginally above the duty level. During the same visit three bottles of whiskey were found with false labels; there was a lack of clarity to relation to what advice was given to the premises after the first visit.

During a second visit to the premises 70cl bottles of vodka and whiskey were found with false labels and duty stamps as well as counterfeit vodka and cases of vodka, wine, gin and lager which were of concern. Invoices for some of these products had been provided but there were discrepancies in relation to dates and quantities. Hand written invoices had been provided for *Shield International* and both Trading Standards and Customs had been unable to find a supplier by this name, and the VAT number had been confirmed as false.

Reference was made to cases of *Vodka Drops* where the invoice showed two cases and three were found on the premises; the operators had claimed they received the

third case free. The cost, if a third free case were provided, would be below the level of duty of a product of this size and strength. Ms Macbeth pointed to the potential health risk posed with the sale of counterfeit and illegal alcohol.

- 106.5 The Chair invited questions from the Panel for Ms Macbeth. It was confirmed that all alcohol products sold in the UK needed to be understood by the consumer, and, as such, an element of the label would need to be in English.

Trading Standards had approached *Bookers* to discuss their return policies as there was the potential that some of the counterfeit products had entered their sales stream in this manner. In relation to the barcode it was explained that counterfeit labels normally used to the same barcode.

- 106.6 The Chair invited questions from the representatives for the applicant. There were none.

- 106.7 The Chair invited questions from the Licence Holders for the applicant. It was confirmed that in June 2010 no visit was made by Trading Standards as the matter had been referred to Customs to undertake their own visits.

Ms Macbeth stated it was difficult for her to make an assessment of how hard it was for an untrained eye to recognise counterfeit alcohol as she approached such products as a trained professional. She stated that it was important for proprietors to be vigilant, and buying products in cash should always be of concern. Mr Grimsey and Ms Macbeth discussed the invoices that had been provided; she reiterated that there were inconsistencies with quantities and production dates.

Trading Standards currently offered no specific training courses on counterfeit and illegal sales, but offered advice to premises during inspection visits.

The alcohol that had been identified as suspicious was still in situ as only Customs had the power to seize it.

Trading Standards had been aware of issues in relation to *Always4U* for approximately two years, but could not disclose anymore details on the matter due to ongoing investigations,

A warning was not issued to the premises in 2010 as the discussion held with the operators at the time was deemed sufficient and the enforcement side was left to be addressed by Customs.

- 106.8 The Chair invited Inspector Apps to make his representation in support of the application. It was recognised that this was a citywide problem. Sussex Police had attended the visit on 8 July and witnessed the refusal of five known street drinkers; however, it was noted that this seemed a lot for this time of day, and some of the refused customers was heard saying that they did not normally have problems being served at the premises. The premises had also voluntarily removed beers, lagers and ciders above 6% ABV volume; it was noted the refusal book was up to date and the CCTV was fully operational despite some downloading and access problems, which had now been rectified.

106.9 The Chair invited questions from the Panel for Inspector Apps. It was confirmed that if the Panel were minded to refuse the application for revocation Sussex Police would seek the addition of a condition restricting sales of beers, lagers and ciders above 6% ABV volume and a restriction to the current licensable hours.

The premises had passed all joint test purchases from Sussex Police and Trading Standards.

106.10 The Chair invited the Licence Holders to put forward their case. Mrs Dina Abadir explained she had been the DPS of the premises since it was purchased in July 2009, and had worked at the premises seven days a week until the birth of her daughter; she now split her time. The premises was run as a family business and was the sole source of income. Both Mrs Abadir and her husband were active members of their local church community. It was not the intention of the premises to supply or sell counterfeit or illegal alcohol and they were shocked when the products were found on the premises.

Mr Grimsey went on to add he hoped there was an alternative to revocation, and asked that the Panel consider a period of suspension to enable Dina Abadir to undertake training to DPS Level 2 and Mina Bashir to train to become a Personal Licence Holder. The Licence Holders had agreed to the condition on the strength of beers, lagers and ciders, and proposed reducing the licensable hours to 2300 in the evenings.

106.11 The Chair invited questions from the Panel. Mr Bashir explained that the free cases of alcohol did not appear on invoices; only the delivery note, and he did not keep the delivery notes due the amount of paperwork. He was able to produce examples of where free stock was listed on delivery notes; however, this was not for purchases of stock that had been identified by Trading Standards as potentially illegal or counterfeit.

106.12 The Chair invited questions from the applicant. The Premises Licence Holder kept all invoices and receipts for his accountant, but he had no detailed knowledge of how VAT or duty should be paid.

The Personal Licence Holder course attended by Mrs Abadir had not covered any material on counterfeit or illegal alcohol; although, her father-in-law had recently attended such training and there was some information on this in the handbook.

Normally alcohol was purchased from *Bookers*, and *Shields* had only been used on a few occasions as they offered to deliver which saved Mr Bashir the car journey and time. Mr Bashir had not found anything suspicious as the delivery was made in the day time in a busy and central area of the city; Mr Bashir had paid in cash from the premises.

The premises had all invoices since they had started trading over two years ago.

All the *Glens* vodka on the premises had been purchased from *Bookers*.

The Licence Holders were satisfied that they had provided invoices for all the products found on the premises despite the inconsistencies raised by Trading Standards.

106.13 The Chair asked for summaries.

The Licensing Manager highlighted the steps available to the premises at a review, and reference was made to Section 11.26 and 11.27 of the Councils Statement of Licensing Policy.

Ms Macbeth stated that counterfeit and illegal alcohol had been discovered at the premises, and the premises had continued to use disreputable wholesalers since the application for review. Trading Standards did consider the future of a business when making an application for review; but was of the mind that revocation was appropriate to uphold the Licensing Objectives.

Inspector Apps noted the cooperation of the premises, but stated that ignorance of an offence did not excuse it. It was noted some of the behaviours associated with counterfeit alcohol were very serious. Revocation was justified; however, if the Panel was minded to turn down the application additional conditions would need to be added, and the operators would need to be much more vigilant and provide a full audit trail for all stock purchases.

Mr Grimsey appreciated that there had been some naivety on the part of the operators; but they had been able to provide the Panel with a full audit trail for all their stock purchases which had been signed off by their accountant. It was appropriate to suspend the licence to allow further training and impose a reduction in the hours of operation.

106.14 The Panel retired to make their decision.

106.15 **RESOLVED** - The Panel had listened carefully to all the arguments put forward in this review and heard evidence from Trading Standards and the Police that criminal activity had taken place in the form of sales of counterfeit and smuggled goods and a failure on the part of the Licence Holder to make the necessary checks to ensure traceability and legality of their stock.

However, the Panel also noted that the premises had fully co-operated with the Responsible Authorities and had offered to undertake training and modify the operating conditions.

The Panel considered a suspension of two months would enable Dina Abadir to undertake training to DPS Level 2 and Mina Bashir to train to become a Personal Licence Holder, and act as a deterrent from allowing the problems that gave rise to the review to happen again; and was consistent with the current Licensing Enforcement Policy.

The Panel accepted the Licence Holder and owners offer to change the licensed hours to 1000 to 2300 daily and that no beers lagers or ciders with ABV volume exceeding 6% be sold.

The Panel stated that this action was a necessary and proportionate response to the review, and would promote the Licensing objectives.

The meeting concluded at 1.31pm

Signed

Chairman

Dated this

day of