

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

**10.00am 2 DECEMBER 2019**

**HOVE TOWN HALL, ROOM G79 - HOVE TOWN HALL**

**MINUTES**

**Present:** Councillors: O'Quinn, Davis and Simson

**Officers:** Licensing Officer Sarah Cornell, Police Licensing Officer: Claire Abdelkader, Sussex Police, PC Kate Hancox, Sussex Police, PC Andre Bernascone, Sussex Police, Licensing Authority Officer Donna Lynsdale, Kat Hoare Democratic Services Officer, Rebecca Sidell – Legal Advisor.

**Representations:** Councillors: Mac Cafferty, Councillor Clare, Ray Teuten, Resident, Juliet Hunting - Lansdowne Area Residents Association, Jonathan Ridley – Community Safety Team

**Licence Holder:** Piers Warne, TLT Solicitors, Mr Phillips Licence holder, Mrs Phillips ), Geoff Cooper (consultant)

**PART ONE**

**40 TO APPOINT A CHAIR FOR THE MEETING**

Councillor Jackie O Quinn was appointed Chair for the meeting.

**41 PROCEDURAL BUSINESS**

**41a Declaration of Substitutes**

There were none.

**41b Declarations of Interest**

There were none.

**41c 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 be not excluded / excluded from the meeting during consideration of Item 42 only.

## **42 THE BORDER STORE LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)**

### **Introduction - Sarah Cornell, Licensing Officer**

42.1 Sarah Cornell – Licensing Officer gave an account of the Licensing case and stated the following:

“Donna Lynsdale from the Licensing Team at the Council has applied for this Review of the premises licence on the 8<sup>th</sup> October 2019, on the basis that the licensing objectives of the Prevention of Crime & Disorder and the prevention of public nuisance have had not been met. Full details of the grounds for the review can be found from page 27 of the agenda in the application.

The premises licence was converted over from the old licensing regime in July 2005 and varied at the same time to sell alcohol from 7am-2am. A subsequent variation was received on 24.07.2006 to extend the alcohol and opening hours to 24 hours which was granted. Sameer Phillips has always been the PLH & DPS.

13 representations have been received supporting the Review from the Police, local residents, local Cllrs, residents associations and public health. 9 representations were received from residents supporting the premises. These can be found from page 43 of the agenda.

Evidence was received from the Police and also from the premises and these have both been circulated for your information.

Where the licensing authority considers that action under its statutory powers is appropriate it can take the following steps:

11.19 Modification of licence conditions – adding, modifying or removing conditions

Exclusion of a licensable activity – this could include limiting hours or activities in all or part of the premises

Removal of a designated premises supervisor

Suspension of the licence for a period not exceeding 3 months

Revocation of the licence

11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should

generally be directed at these causes and should always be no more than an appropriate and proportionate response.

The Council's Licensing Enforcement Policy has adopted the approach set out by the Home Office and DCMS document entitled "Problem Premises on Probation - Red and Yellow Cards; How it would work". The document sets out to encourage partnership working in identifying problem premises and lists steps to be taken in first and second intervention measures together with a list of possible tough conditions. First intervention may be suspension with conditions (yellow card) and second intervention would look to revoke a licence (red card). The Guidance makes it clear that proposed interventions would not prevent the giving of an instant red card in an appropriately serious case. Our SoLP details this scheme in full from page 41 of the policy."

### **Questions to the Licensing Officer, Sarah Cornell**

- 42.2 Cllr Simson queried the dates of the original licence in 2005 and the variation in 2006, although the Licence stated that it was issued in 2016. The Licensing Officer replied that there had been no variation since 2006 and that the licence was last printed in 2016. She stated that the reason for this could have been that the DPS could have changed address.

### **Representation on behalf of the Licensing Authority**

- 42.3 Donna Lynsdale – Licensing Officer on behalf of the Licensing Authority gave an account of the Licensing case and stated the following:

"I am writing on behalf of the Licensing Team to apply for a review of the Premises Licence of The Border Store, 2 Western Road, Hove as the premises does not promote the licensing objectives of Prevention of Crime and Disorder and the Prevention of Public Nuisance and in breach their licence conditions. My application can be seen on Pages 27 to 42.

This premise operates as a Convenience Store and Off-Licence, which has a 24-hour alcohol licence. The premises is situated within the Councils Cumulative Impact Zone (CIZ). There are 84 residential properties that directly look onto the Square, all but one is divided into flats.

The Premises is situated close to Norfolk Square which has always had a bad reputation with complaints from local residents and businesses regarding antisocial behaviour (ASB), crime and disorder and public nuisance, often linked to alcohol in and around the Square. This antisocial behaviour is predominantly caused by the street drinking community who purchase cheap super strength alcohol from Border Stores on a regular basis.

This premises has had a long history in breaching licence conditions and poor management. I have made numerous visits to this premises reminding them of the problems in Norfolk Square and not to sell to intoxicated customers. During these I have never seen the off-licence counter manned which is a condition of their licence.

In November 2013 Brighton & Hove City Council and Sussex Police launched the 'Sensible on Strength' Scheme, which is also supported by other organisations that work with people who are affected by alcohol related harm in one way or another. Businesses were invited to voluntarily stop selling super-strength beer, lager, cider and perry above 6% ABV. Border Store was invited on numerous occasions to join the scheme. Initially Border Store were reluctant to join the scheme, but did join in June 2014 being the only premises in the vicinity that were not a member. At the time of my last visit in July 2019, before submitting my application for a review, the premises had on sale 7.5% ABV perry which is contrary to the SOS scheme.

The premises licence holder, Mr Phillips also has another premises MacFarlane's, 21 Southwick Square, Southwick. Following my visit in July 2019 while the premises in Western Road were still breaching their licence conditions, Sussex Police carried out a licensing visit to Macfarlanes in Southwick and found that this premises was also breaching most of the premises licence conditions.

I have made numerous visits to Border Store reminding them of the problems in Norfolk Square and not to sell to intoxicated customers.

To highlight a couple of points from my application:

Following another allegation in October 2018 of the premises servicing intoxicated customers, Sussex Police requested a copy of the CCTV which showed a male very unsteady on his feet, pick up a can of beer and footage of the counter showing one of the staff selling the beer to him.

On 24 July 2019, accompanied by PC Kate Hancox, Police Licensing, I visited the premises and spoke with Mr Beries, who is the manager. We discussed again about the off-licence counter being unstaffed and that the alcohol covered at least 50% of the premises. Also, alcohol was being displayed where the plan of the premises did not permit. Whilst in the premises a male entered and picked up a can of Desperados Tequila Flavoured Beer (5.9% ABV) and asked, "where have you moved the Lambrini to?" Mr Beries showed him. He then purchased the Desperados and a 1.5litre glass bottle of Lambrini (7.5% ABV). When the male had left, PC Hancox walked to Norfolk Square and saw the male with another male, two females and a dog. All are known street drinkers within the area. Although the male was not intoxicated, he clearly showed signs that he had been drinking and was a regular in Norfolk Square and a regular purchasing alcohol from this premises.

When I confronted Mr Beries and asked why he had served the male, he did not reply.

Since this visit in July 2019, Sussex Police have received further complaints from Norfolk Square residents, Community Safety Team, Local Councillors regarding these premises, and continued breaches of the premises licence conditions.

Following all my visits and letters to the premises, Mr Philips has made no attempt to contact me to discuss the issues raised.

Although it is acknowledged that Border Store are not the only off-licence in the area, they are the premises that we have received the most allegations of selling to intoxicated customers and street drinkers in the area. This has been substantiated on more than one occasion.

Referring to the Revised Guidance issued under Section 182 of the Licensing Act 2003 – April 2018 Edition:

Paragraph 11.10 on page 90 states: Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review.

Paragraph 11.22 at page 92 states: Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented.

Paragraph 11:23 at page 92 concludes with the sentence: But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

Based on my previous interactions with the premises, I have little confidence in either the Premises Licence Holder, Designated Premises Supervisor or any individuals who are running the premises. I also have no confidence that they will stop selling alcohol to the members of the street community that occupy Norfolk Square which is a well known hot spot for anti-social behaviour and crime and disorder.

I therefore invite the council licensing subcommittee to consider revoking the premises licence for Border Store. All attempts and avenues to work with the premises have now been exhausted.”

#### **Questions to the Licensing Authority Officer:**

- 42.4 Cllr Simson queried whether Lambrini was classified as a wine rather than a beer / cider and how this could be clarified within the “sensible on strength” policy. The Licensing Authority Officer( LAO) replied that beers and lagers above 6% should be stopped. Lambrini wine was 5 % whereas Perry was 6.8%. Thus there were concerns that it was strong and cheap and included within the “on strength” policy.
- 42.5 Cllr Davis queried how the complaints compared with ? other premises in the area since there had been a massive increase in numbers recently. The LAO replied that when licensing visits had taken place, the other premises had been using their refusal logs and therefore the majority of complaints had been in connection with the Border Store.

- 42.6 Cllr Davis also asked if the licence changed would the same problems merely be passed on to other stores. The LAO replied that she felt it would not be good practice for other stores to do this.
- 42.7 The Chair stated that there seemed to be little confidence in the DPS or License Holder and how had this state of affairs arisen? The LAO replied that despite visits, her team had not received any responses to their written queries from Mr Phillips and that the refusal book had not been used for 9 months. She also confirmed that one street drinker had been served in front of her during a visit with PC Hancox.

### **Representations from Sussex Police**

- 42.8 Claire Abdelkader, Police Licensing Officer, Sussex Police stated the following:

“As mentioned, Sussex Police submitted a supporting representation to this Review on 4<sup>th</sup> October 2019, this can be found on page 48 of the hearing pack. Further supporting evidence was submitted which we will also be referencing today.

I would like to focus briefly on 3 areas of our representation letter: non adherence to Licence conditions, the sale of alcohol to the street community and the resulting anti social behaviour.

#### **1. *Non adherence to conditions***

The licence is an older one with few enforceable conditions. Over a period of 12 months, Sussex Police and the Local Authority have had a number of interactions with the premises relating to the Premises licence conditions and non-compliance with these. Also, there have been fundamental failures by serving persons who are drunk (an offence under Section 141 of the LA2003).

**07/10/2018** – No staff awareness or evidence of a refusals book being in use (contrary to current Condition 5 under Annex 2)

**08/10/2018** – CCTV footage of premises serving a drunk male

**18/10/2018** – Part B not fully on display, no signage of a refusals policy on display, no training records and staff member stated they had never received any training, CCTV could not be checked.

**14/11/2018** – Police warning letter

**22/11/2018** – Phone conversation with Mr Philips again raising police concerns

**06/07/2019** – No working CCTV and member of staff stated they didn't know when it would be fixed

**11/07/2019** – Counter not being manned, CCTV could not be checked fully, 6.6% Leffe being sold (cond 2 under Annex 3)

**24/07/2019** – Joint visit – no one manning counter, member of street community witnessed buying alcohol and then going to Norfolk square. On this occasion the issue is not with serving the intoxicated but adding to anti social behaviour and street drinking in the area.

**04/10/2019** – CCTV only being stored for 3 days so couldn't be used as part of an investigation into a theft

Running contrary to conditions has never been acceptable to Police and a number of warning letters and interactions have been made in the last 12 months to remind Mr Philips of his responsibilities under the Licensing Act.

Although there was a period where conditions appeared to be being adhered to, this soon ended and reverted back to numerous breaches of the minimal conditions. The main condition of concern being the lack of workable CCTV which is not '*installed and operated to the satisfaction of the police*'.

While, Mr Warne has provided a recent report of compliance, it has taken until a Review application has been submitted for Mr Philips to ensure that the conditions of the licence are finally being fully adhered to.

Additionally, as the second representation from Sussex Police, submitted by Mr David Bateup shows, mismanagement and non adherence to conditions has also been seen at Mr Philips shop in Southwick. This further evidences his disinterest in ensuring the licensing objectives are being promoted and the Licensing Act 2003 being upheld. I also make reference, as Ms Lynsdale has, to the Section 182 guidance, specifically paragraph 11.22 surrounding poor management being a direction reflection of poor company practice.

## **2. Sale of alcohol to persons who are drunk/vulnerable as well as the Street Community**

(Play CCTV footage)

[Footage not shown as not all parties in agreement]

Read aloud from witness statement of PC William Line (Statement 2 in Police evidence bundle)

As the Police statement shows, this was witnessed by Police Officers and Ambulance staff. As well as this being an offence under the LA 2003, the premises had only been visited 10 days before and verbally reminded not to serve intoxicated persons.

We will have also read other supporting representations from the local community who state they have witnessed serving of alcohol to persons under the influence. These persons (who are suspected to be members of the street community) then consume their alcohol nearby including within Norfolk Square Gardens.

**2. Local issues/ASB**

A problem profile for the area has been created twice by Sussex Police, once between October 2018 and March 2019 and then another from March 2019 onwards following a number of complaints from local residents and the local community. This has led to increased patrols by officers and PCSOs, the active enforcement of the PSPO (Public Space Protection Order) as well as increased scrutiny by Police Licensing. Further details of what a problem profile means can be found within statement 8 of the police evidence bundle.

Known members of the street community are regularly witnessed by PCSOs causing anti-social behaviour and public nuisance in Norfolk Square Gardens and the surrounding area including drunkenness, loud music and arguments/fighting fuelled by alcohol. Sussex Police have taken an active role in aiming to prevent this behaviour and tackle it when seen. Enforcement of the PSPO includes PCSOs and officers confiscating alcohol and moving groups and individuals along if they are witnessed drinking in public.

As shown in the report (Sussex Police evidence 9) there have been 82 calls relating to ASB in Norfolk Square in the last 6 months with the highest times of reporting being 00:00-01:00, 14:00-16:00 and 17:00-21:00. Indeed, the sale of alcohol to a drunk person that was witnessed by police occurred at 15:31.

A Police Licensing officer has also directly witnessed a member of the street community being served before going to Norfolk Square to sit and consume his alcohol. While there was no report of the male being intoxicated at the point of sale, this again reinforces the link between the Border Store and street drinking in the local area. As these persons then become intoxicated they go on to commit ASB and disorder. The Border Store and Mr Philips are therefore not promoting the licensing objective of the prevention of public nuisance and indeed seem to be directly contributing to issues in the area.

Sussex Police regard the premises to be a 'magnet' for the street community as there is an awareness that the premises serves persons who are intoxicated and even if the staff do refuse the sale, the street community remain in the vicinity causing public nuisance or committing anti social behaviour. This appears to be a legacy of the store's mismanagement and has caused the premises to become a generator of crime and disorder in an area where the residents are continually suffering from ASB especially during the summer months.

Sussex Police support the request for the revocation of the premises licence made by the Local Authority licensing team in view of the persistent intelligence being received around the serving of alcohol to intoxicated persons, the continuing breaches of the minimal Premises Licence conditions and the high levels of public nuisance, disorder and anti-social behaviour in the immediate area.

These, Chair are the submissions from Sussex Police for your consideration."

**Questions to Sussex Police**



- 42.9 Cllr Simson asked whether since a majority of incidents were happening during the day, revoking the licence may be the only solution since a reduction in hours was not useful. The Sussex Police Licensing Officer –(PLO) replied that this was true.
- 42.10 Cllr Simson asked what level of confidence they had that this store could turn around their current situation and the PLO replied that it had taken review proceedings to **get them to engage** and they therefore had no confidence. ???
- 42.11 The Chair asked about the location of the Border Store and that it was a known meeting place for street drinkers, what the percentage of alcohol on display was and the fact that there were two counters at the shop. PC Hancox, the PLO confirmed that during a joint visit it was at a least 50% with 2 alcohol counters and alcohol stocked at the back of the premises on all three walls. The Applicant disagreed with this.
- 42.12 Cllr Simson queried whether the percentage of alcohol sold within the premises as shown on the plan, was difficult to ascertain. Donna Lynsdale, LAO confirmed that alcohol was sold on different places to the plan and the Chair replied that this was something that the Police acknowledged could be conditioned.
- 42.13 The Chair asked whether the Applicant Mr Phillips had engaged with the Police. The PLO replied that he did make a phone call after visit in 2018 and that there was a period after that he did comply to the conditions. Then in July 2019 – the counter was not being manned, and thus it had reverted back to previous situation and lapsed.

### **Representations from Councillors and other local representatives**

#### **Cllr Phelim MacCafferty**

- 42.14 Councillor Phelim Mac Cafferty stated the following:

“I support the review and would urge the panel to revoke the licence for Border Store. I would argue that the premises does not promote all four Licensing Objectives viz the prevention of crime and disorder; public safety; the prevention of public nuisance and the protection of children from harm.

The reasons for revoking the licence are as follows:

#### **PUBLIC SAFETY**

I have raised the issue of a potential review on several occasions with the city council and Sussex Police. Over a prolonged period now, we have seen a repeat pattern of street drinkers appearing in the square, fighting, causing crime, public urination and defecation. There is a clear evidenced relationship between alcohol availability and consumption, and when the inevitable question of where the alcohol is coming from fuelling this anti-social behaviour into the early hours of the morning, I'm afraid there is a very short list of answers and the Border Store is prime among them. The Border

Store premises currently has a licence for 24 hours. The police rep states *“the link between The Border Store and persons purchasing and the drinking in Norfolk Square could be seen”*

Why we've been so insistent on the issue is because our residents in Norfolk Square have been suffering crime, anti-social behaviour from crowds and street drinkers gathering in the square. In the past two years, the square has been defined a 'hotspot' by Sussex Police. The extended hours of opening and access to alcohol all hours of the night have made living in the neighbourhood hellish and a glance at the times of calls to the police in the police rep paints a clear picture this is happening all round the clock.

The premises is in the Cumulative Impact Zone. 3.1.2 of the Council's Statement of Licensing policy states that *“the concentration of licensed premises in an area of the city centre is causing problems of crime and disorder and public nuisance”* And in less than half a mile along the same road as the off licence- Western Road- there are 67 licensed and off licence premises.

You will also note Councillors that in any case a 24 hour off licence in the Cumulative Impact Zone is in contravention of the city council's Matrix approach for licensing decisions on p18 of the Statement of Licensing Policy. If this came to a panel today it would most likely not be allowed.

Drinking outside licensed venues in this area in 2016 tragically led to a death of a young man who was killed under a truck outside the Temple Bar public house<sup>1</sup>. Our neighbourhood all too recently saw a young person tragically killed because they were intoxicated falling onto Western Rd. We have seen from the comments from one of the PCSOs in the Police Rep at Appendix C that we have been lucky that one of the clients of the store was lucky enough not to lose their life falling near a bus through intoxication.

## **PREVENTION OF CRIME AND DISORDER**

The issue of hotspots and street drinkers is addressed in the policy and although there is now ample evidence of the damage being caused by street drinkers, the reality is that crime and disorder have not been prevented.

Pointing to the council's policy you are reminded *“...the Licensing Authority will have regard to prevention of crime and disorder by virtue of street drinking and anti-social behaviour when considering applications in this area.”*<sup>2</sup>

A disproportionate quantity of the volume of emails and phone calls I take on the issue of anti-social behaviour are residents reporting the consumption and over-consumption of alcohol. This role of off licences is reflected in the Council's Statement of Licensing: *“Off licences can contribute to problems of street drinking excessive drinking and related disorder.”*<sup>3</sup>

Specifically for Norfolk Square, the quantity of complaints during the summer for the last few years has been *numerous complaints every single day*. I have amassed hundreds of complaints. It has seen residents bring deputations to a meeting of full council<sup>4</sup> where they described Norfolk Square as a “no go area”. They have spoken on local radio and tv. Residents have objected to new licences in the area too, objecting to a new licence for a café in the Square in November 2016 because of the potential for disorder<sup>5</sup>. Footage is repeatedly gathered by residents who have shared it with the responsible authorities and it shows street drinkers brawling, drunken yobs, swearing, drinking, indecently exposing themselves and urinating, smashing of bottles, large crowds who have assaulted and threatened residents.

For far too many of my residents this applies not just in the immediate locality but over a much greater geographical area. When we gained the cooperation of PCSOs and Police Constables to patrol the square in the summer, we noticed that when they patrolled the square drinkers would appear in other open spaces bringing their behaviour with them.

This is why in relation to the section of the Statement of Licensing I hope the council will be held to its word

*“In a residential area for example the concerns of local residents will be relevant when considering applications for off-licences especially if there is evidence of anti-social behaviour, street drinking...”<sup>6</sup>*

Specifically, this store has now been caught repeatedly not showing CCTV, providing no training for staff about licensing and not participating in the Sensible on Strength campaign- by selling drinks like Lambrini. The designated premises supervisor is doing this in the other premises he owns in West Sussex too.

If you refer to p12 of the rep from Sussex Police

There had been around 82 calls to Police with Norfolk Square and alcohol search terms and a relation to antisocial behaviour (ASB) between 1st April and 4th October 2019.

The area is a ‘Problem Profile’ to the Prevention team and of focus due to street drinking and related ASB reported by local community/residents. 63 of the 82 calls (76%) reference this ‘Problem Profile’ while the remaining 17 describe ASB behaviour in Norfolk Square. Although residents would refute this number as too small and inaccurate.

## PREVENTION OF PUBLIC NUISANCE

There is well-documented anti-social behaviour which has plagued this neighbourhood.

The Brunswick and Adelaide ward is densely populated. This density means that the licensing authority must be mindful of the undue impact of licence applications that have the potential to impact so many people at once.

If you refer to Appendix B in your papers the council’s licensing team is clear: *“this antisocial behaviour is predominantly caused by the street drinking community who are purchasing super strength alcohol from Border Store”*

What has become very clear over the past three year period is that there is inadequate and dangerous management of the off licence. I have now had countless pieces of evidence and anecdotes from residents and I myself have borne witness myself to

intoxicated customers being served, something that the licensing authority and Sussex Police have witnessed too which forms part of their representation.

The neighbourhood already faces some stark consequences for access to alcohol.

According to the Brighton & Hove Public Health Framework for Assessing Alcohol Licensing Police recorded alcohol related incidents are the 8<sup>th</sup> highest in the city.<sup>7</sup>

There is a clear and well-evidenced relationship between alcohol over-consumption and antisocial behaviour and crime. And my residents are paying for it.

### **PREVENTION OF CHILDREN FROM HARM**

The evidence from the licensing authority tells us that the last entry in the refusal register was March 2018 and this includes any underage drinkers. Figures for the DrinkAware campaign in 2016 tell us that of the 39% of 11-15-year-old English pupils who drank alcohol said they bought it themselves and of that 10% bought it from an off-licence.<sup>8</sup> The premises having no underage refusals looks peculiar in this context.

To conclude, Chair and councillors, conditions aren't being adhered to and the concern of residents is that neither Sussex Police nor the city council have adequate resources to enforce these conditions and the premises is feeding the spiralling anti social behaviour that is making residents lives a misery in Norfolk Square. But importantly it's not just Norfolk Square. Brunswick Square has been the subject of what Sussex Police call a 'problem profile' too- the quantity of anti-social behaviour that the square has attracted means they say they are keeping close tabs on it.

The premises has been given the benefit of the doubt on countless occasions- both Sussex Police and the licensing team have been consistent and patient with their attempts to make the Designated Premises Supervisor comply with the conditions. But persistently the evidence- even the shop's own CCTV- tells us that they are not fit to hold onto their licence.

Repeatedly and for well over the course of 18 months, the owner has defied the repeat warnings from Sussex Police, the council's licensing team and disregarded the ongoing concerns of the local neighbourhood. They have done this for far too long and I ask you to revoke their licence. Sussex Police are candid in their conclusion: to *support the request for the revocation of the premises licence*. It is for this all of these reasons that I have outlined for you this morning that I urge you to revoke the licence for Border Store."

### **Councillor Clare**

42.14 Councillor Clare gave a short addition to this speech and stated:

"The problem with Norfolk Square is that people shout and congregate in the area and I feel for the residents – where they are regularly disrupted by antisocial behaviour. They have done lots of things and installed cctv and worked with local businesses to make it welcoming. We have to make a tough decision. There is a clear case that shows that the sale of alcohol is clearly linked to the ASB – Anti social behaviour. Therefore I support the review."

**Questions to the Councillors**

- 42.15 The Chair asked Cllr Mac Cafferty whether he was getting reports of problems after 1 am. The Councillor replied that he was and that residents had formed a WhatsApp group to report on this. There were complaints about the area all the time and phone calls were as likely in afternoon as in the morning. The Councillor confirmed that the recording and number of representations was also an issue and that many were not being logged by the police. He confirmed that the situation was sadly happening 24 / 7 365 days per year
- 42.16 Cllr Simson asked about the specific issues for the The Border Store. The Councillor replied that he had personal experience and could show footage of this store selling to intoxicated street drinkers. He stated that he knew the Co-op opposite was tough in its approach to selling to drinkers and that they worked with the Community. He stated that the fingers pointed to one place – The Border Store.
- 42.17 Piers Warne on behalf of the Applicant queried the CCTV footage mentioned as they had not seen this. Cllr Mac Cafferty said that he had not seen this, but had seen evidence of this noted in the papers.
- 42.18 A resident stated that late at night there were lower numbers of incidents reported since they would often prefer contact other people locally rather than contact the police again.

**Representation from Jonathan Ridley, Community Safety Team**

- 42.19 Jonathan Ridley, Community Safety Team gave a short summary highlighting the following points:  
He confirmed he had been getting reports on a regular basis from April 2019 and that these were constant . He also got specific reports in October 2018 about the Border Store anecdotally through LATs and a meeting at John St with police 9 months ago. There were 5 residents and there were problems which named the Border Store. He confirmed that his role was to address anti-social behaviour - ASB and to try to identify the culprits and take action to aid police in their enforcement.

**Questions to Jonathan Ridley, Community Safety Team**

- 42.20 Chair asked Jonathan Ridley to clarify whether in that John St meeting it had been confirmed that the Border Store had been selling alcohol to street drinkers and J Ridley confirmed that this had been confirmed at the meeting.
- 42.21 Cllr Simson queried a statement on page 57 on witnessing street drinkers personally using the shop. J Ridley replied that this was not his statement.

- 42.22 Cllr Simson queried whether his role was to work with street drinkers and he replied that he was involved more with liaising and working with organisations such as Equinox who assist street drinkers. The Chair then asked two representatives from local residents associations – Ray Teuten, Norfolk Square – mentioned on p. 46 and Juliet Landsdowne mentioned on page 47 to give their representations.

### **Representation from Ray Teuten, Norfolk Square Residents Association**

- 42.23 Ray Teuten stated that he had lived in Norfolk Square for 12 years and had been spat at and punched as a resident in the area. He confirmed that the area had gone downhill and police had subsequently taken action, including tipping booze away, since then it had calmed down. However, now in the last 2 years, the community had taken various schemes to counteract this such as a gardening project and children's library to try to design out the issues.

However, in the summer there were often groups of 18 – 20 drinkers around the children's library and that 28 days out of 30 in July there were high levels of disorder including 4 major fights and 2 incidents where ambulances were called. All of these were drink-fuelled in an area where people have 24 hour access to alcohol. He confirmed there were 5 main premises and Border Store was the nearest. He had witnessed the sale of alcohol to someone who was wasted. He confirmed people turn up at 12 and stay until 8 or 9 pm and used Norfolk Square as a toilet – a responsibility that any premises should take on board.

He confirmed that he knew the names of the street drinkers and that therefore the Border Store should also know this. He confirmed that the premises stocked 1.5 l Lambrini which was sold in 2 bottle volume and that this is cheap, stating that one 1.5 l bottle of Lambrini would be sold to a street drinker at 8pm and then she will be back at 12 for another one. The Border Store serve these people and he stated that it was not difficult for the premises to do more as it is part of their responsibility as part of the community.

### **Questions to Ray Teuten:**

- 42.24 The Chair asked Ray Teuten to give an example of witnessing street drinkers being served by the premises. He gave one example of a woman so intoxicated in the shop that she asked for help to reach for a bottle and the store assistant helped her to do this, in this state. He also mentioned that groups of 15 – 18 street drinkers would turn up outside the premises in an area that used to be his front garden and they had purchased alcohol nearby.
- 42.25 The licence holder's solicitor queried whether this incident was a couple of months ago and Ray Teuten replied it was in October 2018.
- 42.26 The s solicitor asked for the names of street drinkers and Ray Teuten said he would not give this as he had been punched by these people.

- 42.27 The solicitor asked if he would be willing to provide names and R Teuten **replied that this was recorded on 27 July between 12 – 8 pm.** ???The Applicant's solicitor replied that they could work together to assist the situation. The Chair added that the premises should already know who was drunk and who the problem drinkers were.
- 42.28 The s solicitor asked if Lambrini was still a problem for the area and R Teuten replied that it was. The Applicant stated that in October 2018 it was stocked regularly but was not now. R Teuten stated that Lambrini, Desperado and Scrumpy Jack were the 3 drinks bought regularly by street drinkers.

### **Representation from Juliet Hunting, Lansdowne Area Residents Association**

- 42.29 Juliet Hunting, Lansdowne Area Residents Association gave the following representation.  
"I have lived in area for many years. The area has degenerated. There is ASB always at the back of one's mind. It's unpleasant to walk through Norfolk Sq. The Border Store have clearly broken terms of their licence. I want to thank the licensing team and police for their support, but it is the breaking of the law that has contributed this situation.
- 42.30 The Chair thanked J Hunting for her representation and then announced a short break in proceedings.

### **Representation on behalf of the Licence holder**

- 42.31 Piers Warne – TLT Solicitors presented the following account on behalf of the licence holder and stated:

"We have listened with concern and interest. The Premises License Holder totally agrees about the street drinking issues in area, and part of the problem is when people are moved on they go somewhere else. It does their business no good as well.

One point was the notion that everyone goes to the Border store – all street drinkers. That is not true. We can show 9 occasions of residents who drink in park that have been refused and then they have gone immediately over to Coop to buy alcohol. Geoff Cooper will speak later on this in his report.

He then highlighted the following points:

- 1 The Border Store is a family run business that serves shift workers and others in the community who have different kinds of jobs.
2. A number of other supermarkets have opened in the area who are also serving alcohol.
3. Alcohol does not make up 50% of the store space.
4. There are 2 counters for a reason since the police reports stated that under 18s were not allowed into the back area. There had been no mention of changing this in discussions about the licence.
5. On one counter there is good CCTV and there is no issue with shoplifting and the License Holder is careful about who they serve.

6. There is a significant history of the Licence Holder working with officers and also a compliance after a review. The Licence Holder has not been trusted and there is nothing wrong with matters not having been totally resolved 2 months after a review.
7. The Licence was granted in 2005 with a variation in 2006. It was a 24hour licence with a high strength lager condition added, which pre-dates the Licensing Objectives. The applicant joined the high strength scheme in 2014. Between 2006 and 2018 there were no issues with the operation of the store – a significant period.
8. It was not true that there was a breach of the licence reported at every visit. He quoted 4 examples within Donna Lynsdale's report that there had been no breaches. #
9. He disputed the direct evidence of serving intoxicated people in 2018 and stated that this did not cause the issues late at night.
10. He went through a long list of examples within the Blue redacted bundle where there had been substantive compliance after breaches, the CCTV had been checked and was working and that the shuttered section had been closed and that Lambrini had been removed, but was still being sold next door.
11. He cited the sensible drinking scheme and stated that Leffe the Belgian beer was not a street drinkers drink.
12. Since the review, Geoff Cooper, had offered to voluntarily close the premises and had submitted a full report and stated that the problems are not just with the Border Store.
13. He confirmed that they were happy to accept the 6% lager strength condition and that all staff had complied with the training and that the CCTV condition was now fully compliant.
14. He concluded that there was now a robust set of 14 conditions to replace the current operating schedule.

42.32 Donna Lynsdale, Licensing Authority officer stated that she had been asked to provide Conditions. She confirmed that her team had put this together and copies were handed out to all parties in the room.

42.33 Piers Warne solicitor to the Applicant then continued to highlight the following points:

15. Regarding Condition 4 –
16. Regarding Condition 6 – There was a minimum of 2 members of staff to always be in the store . – From a cost point of view – that would be crippling and instead a security radio system was in place
17. Condition 20 – refusing alcohol to those with alcohol dependency  
p.49 – Addendum – 2a of Borders Store refusal policy. It tells you about setting out signs of refusing service.
18. 27 Nov – several premises were checked – 7 out of 9 off-licences failed. – Test purchases we are aware of have been passed. He confirmed that this It demonstrated full compliance.
19. You cannot see Norfolk Square from the premises.
20. There is evidence to show other premises sell Lambrini.
21. He highlighted examples of supporting evidence on p.95 – 97 stating that they had never seen staff sell alcohol to underage or homeless people.



**Questions to the Licence holder**

- 42.35 The Chair queried the evidence on staff training since there had not been a lot, and staff did not appear to know much. The Applicant's solicitor replied that the evidence of training was possibly misunderstood since the CCTV had not been working for 3 days. He confirmed that in 2009?? Viola Vishara and Mrs Phillips did training. The Chair confirmed that it was a massive responsibility to serve alcohol to the public and that she queried the percentage of floorspace within the store that was given to alcohol. The Applicant answered that this was approximately 40% as shown on the plan.
- 42.36 Cllr Simson queried why Mr Phillips did not respond and engage earlier, especially at the start of the process in October 2018 ? The licence holder replied that he had done and that there had been a meeting with residents. Cllr Simson also asked if Mr Phillips worked in store himself and the Applicant answered that he did work in store everyday for a couple of hours but relied on the Manager, who had been there for 6 years to handle sales. Councillor Simson also asked how familiar Mr Phillips was with the problems of Norfolk Square and stated that she was concerned that customers were making repeat purchases and that this had not rung alarm bells for the applicant.
- 42.37 Cllr Simson queried the fact that alcohol was stored at the back of the store and that staff were assisting customers who were drunk to buy alcohol. The Applicant replied that the last evidence of this was in 2018.
- 42.38 Cllr Simson queried the test purchases that had been carried out and the Licensing Authority Officer, Donna Lynsdale confirmed that in July 2019 Lambrini had been removed from the premises, as stated in the report.
- 42.39 Cllr Simson asked why Mr Phillips did not make some changes when he had been let down by his staff as stated in the Police report on 22 Nov 2018. PC Bernascone clarified that this was documented in October 2018. The licence holder replied that he had been willing to engage and work with officers on this.
- 42.40 Cllr Simson asked how the Panel could now be convinced and confident that the premises would adhere to the rules from now on? The licence holder replied that in May 2018 they had agreed that there had been serious breaches and that they had tried to work with the authorities and had taken on adviser, Geoff Cooper to go forward on this.
- 42.41 Cllr Simson queried when the solicitor was engaged, and it was confirmed that this was one month ago in November.
- 42.42 The Chair stated that the shop had an extra responsibility to be careful in who they sold alcohol to and that the Panel was unhappy about the 24-hour problem and that there was evidence of selling alcohol throughout the day. She queried whether the Applicant had taken on board the importance of Condition 10. The licence holder replied that this

only worked when everyone else was doing He confirmed that the issue of not selling single cans did have an effect on the business, since the store could not offer the multipack savings that their supermarket rivals could. He confirmed that this was evidence that the store was trying to do the right thing. The Chair commented that the single can condition was better to comply with, rather than having the licence revoked.

- 42.43 Cllr Davis noted that there had previously been a good period for the store and then an 8 – 10 mth period where they were using the licensing team as a management group where there had been a litany of problems for the police to mop up. He replied that looking at the history, there had been mainly substantial compliance, giving two examples of full compliance on Monday 29<sup>th</sup> October and also a May visit – where it had been stated that the desk had not been manned, and he felt that this was due to the significant scrutiny on the area.
- 42.44 The Chair stated that both Cllr Mac Cafferty and the Police had identified the store as a hotspot as confirmed by the residents in their summing up. The solicitor replied that Cllr MacCafferty should have shared his information and worked with the Applicant on this.
- 42.45 The Chair confirmed that her biggest worry was that staff could not identify which customers were drunk or not, together with the lack of compliance with both Police and Licensing teams. They replied that they accepted that October 2018 was a date of sea change and that they hoped that they could agree on Conditions and that they had never called off the review. Donna Lynsdale replied that it was not the Licensing Authority's job to offer independent consultancy advice – it was up to the applicant to apply for this himself.
- 42.46 Cllr Simson queried the store's use of radios and asked whether they were a member of BCRP – the radio authority and it was confirmed that they had been a member for at least a couple of years.
- 42.47 Cllr Simson queried how the licence holder had previously been able to tell if a customer was homeless or drunk. The Applicant answered that it was clear to them if someone lived on street. Cllr Simson also confirmed that she knew the Condition regarding indelibly marked alcohol did work due to the labelling indicating which premises an item came from. The licence holder replied that they had already stated that this worked best when everyone bought into it, but that the high strength scheme was voluntary. Cllr Simson also highlighted the importance of training when refusing sales to those customers with alcohol dependant issues.
- 42.48 Donna Lynsdale, Licensing Authority Officer asked from which date the shutter over the alcohol sales at the back of the shop had been closed. They confirmed that this had been closed all the time and that photos had been taken by Donna Lynsdale evidencing this.
- 42.49 Donna Lynsdale, Licensing Authority Officer stated that in Oct 2018 she had sent a letter to the licence holder with all breaches Donna confirmed that they had evidence of serving an intoxicated customer and asked why the letter was not replied to. She also queried why prior to 2009?? her queries regarding training had not been replied

to. Donna Lynsdale confirmed that the visit in October 2018 had been due to increased sales due to the weather and that she normally signed the refusal book, but this was not done on this occasion. The Applicant replied that Mr Coopers report clarified these queries on training.

- 42.50 Police Licensing Officer Claire Abdelkader asked if the Applicant had considered removing the second counter since it was regarded as a constant breach. The Applicant replied that it worked well since the spirits stayed behind the counter at back and that the other one stored cigarettes behind it and that there were 6 supermarket competitors for the store.
- 42.51 Claire Abdelkader, Police Licensing Officer stated that since the Applicant used the radio, they could also view galleries of problem customers through this service, as they stated that they had barred 9 customers. The Applicant replied that they were unaware of this and would of course do this in the future. The Police Licensing Officer also highlighted that Geoff Cooper's report regarding the weather and the street community changed depending on the month and thus the premises got a clean bill of health because the report was done in November, a quieter time than the summer, with July being one of the worst months.
- 42.52 PC Hancox stated that Mr Phillips Southwick store had also had 6 breaches, which had prompted Geoff Cooper to get in touch with the police. She therefore queried the management style of training for staff. The replied that as business owner, Mr Phillips trained the staff and had sent all staff including those from Southwick to training and online courses.
- 42.53 Councillor Mac Cafferty queried whether it was the duty to do something about the drink dependency issue since the DPS would see all these customers every day. The replied that there were many regular customers and that it was difficult to say no to regular customers. He confirmed that if there had been a review for better conditions in 2018 then this would have been a better situation for everyone. He confirmed that if they had been notified on this, they could have worked with the Licensing Authority on this.
- 42.54 Councillor Mac Cafferty stated that the had been offered olive branches, such as stopping single cans and the replied that small premises such as theirs were especially adversely affected by this
- 42.55 Councillor Mac Cafferty stated that the premises' bad behaviour had been caught out quoting the report as "We have banned 9 people " The replied that this was not a fair description and that people were being barred before this, which could be demonstrated by use of CCTV. – That people leave the store and go elsewhere. He confirmed that a review focusses the mind and that for condition breaches, they could prosecute and give fines. He confirmed that instead they were trying to work at improving.

## **SUMMARIES**

42.56 Sarah Cornell, Licensing Officer gave the following summary:

“This hearing is for a Review of the Premises Licence for Border Store, 2 Western Road, Hove, on the basis that the licensing objectives of the Prevention of Crime & Disorder and Prevention of public nuisance have not been met. You have heard from all the parties present.

Where the licensing authority considers that action under its statutory powers is appropriate it can take the following steps:

Modification of licence conditions – adding, modifying or removing conditions  
Exclusion of a licensable activity – this could include limiting hours or activities in all or part of the premises  
Removal of a designated premises supervisor  
Suspension of the licence for a period not exceeding 3 months  
Revocation of the licence

In deciding which of these powers to invoke, it is expected that licensing authorities. Should, so far as possible, seek to establish the cause or causes of the concerns that The representations identify. The remedial action taken should generally be directed at These causes and should always be no more than an appropriate and proportionate response.”

42.57 Donna Lynsdale gave the following summary on behalf of the Licensing Authority:

“Based on my previous interactions with the premises, I have little confidence in either the Premises Licence Holder, Designated Premises Supervisor or any individuals who are running the premises. I also have no confidence that they will stop selling alcohol to the members of the street community that occupy Norfolk Square which is a well know hot spot for anti-social behaviour and crime and disorder.

I therefore ask for this to be considered when making your decision and invite the council licensing subcommittee to revoke the premises licence for Border Store.

We would ask that if the conditions we have put forward are to be considered then there should be a 3 month suspension and new hours agreed”.

42.58 Claire Abdelkader, Police Licensing Officer, Sussex Police gave the following summary and stated the following points:

- “Police evidence is balanced and has shown improvements have been made at Border store for a period but then breaches have resumed. We have not been selective in what visits we have included but have presented the whole picture. Our evidence also shows that we have spoken to the premises regarding local issues of street drinking/ASB as well as the breaches of conditions.

- The Border Store has continually fallen far below the standards that Sussex Police expect from a licensed premise, particularly one that is currently licensed to sell alcohol 24 hours a day.
- We have tried a stepped approach with numerous visits, letters and phone calls. A Review is always seen as a last resort for Sussex Police and shows that communications have broken down and that confidence has been lost in the management and PLH/DPS.
- The current conditions were not being adhered to on a regular basis (an offence under 136 of the LA2003) and Sussex Police question whether any additional/new conditions will be effective in mitigating the risk.
- The premises have been witnessed on more than one occasion serving to persons who are already drunk, with one of these seen by a Police officer who had previously been dealing with the male involved. This is a criminal offence and is undermining the Licensing Objective of the prevention of crime & disorder.
- The area in which the premises lies is subject to a Sussex Police problem profile with a named officer in charge due to high levels of ASB and local resident concerns. It is also covered by a PSPO which the very existence of evidences the issues that the area faces in relation to alcohol and disorder.
- Sussex Police have endeavoured to work with Mr Philips and the Border Store through regular visits and letters detailing the issues. This hasn't worked and the licensing objectives will continue to be undermined if the premises is allowed to continue to trade as it is.
- Therefore, Sussex Police believe that revocation of the licence is a necessary and proportionate measure in this instance."

42.59 Councillor Mac Cafferty gave the following summary:

"In 8 years of being a Councillor these are some of the strongest reps I've seen from the council's licensing team and Sussex Police. To quote the applicant in their presentation, "something needs to be done" and that something is the revocation of the licence.

The licensing authority has proposed conditions which the licensee has refused to contemplate. I believe that because of that intransigence, the licence should be revoked. The applicant talked about their client having "no end of stress" but what has been clear to me and hopefully clear to the panel from their representation today, is that my residents have faced a colossal amount of stress because of the disruption to their sleep caused by the street drinkers in Norfolk Square."

42.60 Pier Warne gave the following summary on behalf of the Applicant highlighting the following points:

- The Applicant had shown willing in working with officers including removing Lambrini from the shelves - which was a key product
- Quoting paragraph 14.45 in the Licensing Guidance that the Cumulative Impact Zone should not be used as grounds to revoke a licence.
- The applicant would consider any discussion around the 2 proposed sets of conditions – both the Applicants and Donna Lynsdale- The Licensing Authority, as they felt these had not been fully considered yet.

- The applicant's business was a small family business that had tried to work with the authorities since 2018.

42.61 The Chair concluded the meeting and confirmed that the Applicant would receive the decision within 5 working days.-

### Decision

42.62 **RESOLVED** – The Panel's decision was as follows:

"The panel have considered this application for review, supporting representations, representations for the Border Store, and all the submissions made at the hearing. The panel have had regard to the S182 Guidance and the Council's Statement of Licensing Policy.

The review is brought by the Licensing Authority on the basis of the Prevention of Crime and Disorder and Prevention of Public Nuisance licensing objectives. Representations supporting the review have been made by Sussex Police, Public Health, local Councillors, Residents Associations and local residents and the Safer Communities Team. Representations from residents supporting the Border Store were also received.

The Border Store ('the premises') is close to Norfolk Square which is a hotspot for considerable anti-social behaviour and related crime and disorder linked to the issue of street drinking in and around the square. The area has been the focus of a recent local police prevention team operation due to these issues. Following evidence of and intelligence relating to the premises selling alcohol to intoxicated persons and the street drinking community, the Licensing Authority and Police have made a number of visits to the premises from October 2018 to October 2019 and have sent written warning letters to the premises licence holder. Both responsible authorities found evidence of the premises acting in contravention of S141 of the Licensing Act 2003 by selling alcohol to intoxicated persons and the street drinkers from Norfolk Square and a number of breaches of conditions relating to CCTV, training and staffing the counter. Following interventions, they are not satisfied with the response from the licence holder who is also the DPS and call for revocation of the licence as they do not have confidence in the management of the premises to achieve long term improvement and compliance.

Local residents and local Councillors gave evidence of the issues of anti-social behaviour in the area and the disturbance to their daily living. Many have witnessed sales of alcohol from the premises to the street drinkers and believe that these premises above others in the area are responsible for such sales thereby fuelling the anti-social behaviour in the area.

On behalf of the licence holder it is submitted that there has been an effective response to the issues raised by the licence holder especially since the review has been submitted, that there has been engagement of the services of a licensing consultant and that mediation has been offered by the licensing consultant but has not been taken up. It is also submitted on behalf of the licence holder that in the long history of the licence the premises have mainly been compliant and that they cannot be held solely responsible for problems in the area. A set of conditions and measures are proposed on behalf of the licence holder to address the issues raised and it is submitted that it would not be appropriate or proportionate to revoke the licence at this stage.

The panel must take such statutory steps under the Licensing Act 2003 in response to the review as are appropriate to promote the licensing objectives. The panel have considered all the options available to them. The panel have also considered the Council's Statement of Licensing Policy and enforcement approach and the S182 Statutory Guidance in relation to reviews.

In terms of modification of conditions, the panel have considered the conditions proposed by the licence holder and those put forward by the Licensing Authority and Police. It is clear that there is a gulf between them as to what is deemed appropriate. For example, the premises consider that a no sale of single cans condition is disproportionate while the responsible authorities consider it necessary. The panel agree that such a condition would be necessary and appropriate in these circumstances along with many of the other conditions proposed by the Licensing Authority and Police. We consider that the conditions offered by the premises do not go far enough. We also share the concerns of the responsible authorities that the premises would not adhere to conditions imposed upon it in the future; several breaches of conditions have been identified by the responsible authorities and while improvement was seen for a period of time this has not been sustained. The licence holder's purported current compliance has also only been for a short timescale after being notified of an imminent review.

In terms of suspension of the licence, the panel do not consider this is appropriate or see what purpose this would serve at this stage. It is appreciated that a short suspension was offered on behalf of the licence holder after the review had been applied for but in our view this was too late to serve any real purpose.

It is clear from the evidence of the Licensing Authority, the Police, the local community and their representatives that these premises have been trading irresponsibly by selling alcohol to intoxicated persons and the street community. This has undermined the licensing objectives to the detriment of the local community. In our view the response of the licence holder has not been satisfactory. While some improvements especially relating to conditions has been shown, there has been persistent intelligence about sale to the street community and this was witnessed again by the Licensing Authority and Police in July 2019. The panel considers that there has been a tendency by and on behalf of the licence holder to minimise these issues and a failure to take a more pro-active stance and fully appreciate the responsibilities involved. We believe this is evident in the responses to the interventions of the police and Licensing Authority, the report of the licensing consultant, and the discussion around appropriate conditions. Therefore, the panel do not have confidence in the ability of the licence holder to achieve the effective and sustainable improvement that is required to promote the licensing objectives and break the clear link between the irresponsible sale of alcohol at these premises and the problems of anti-social behaviour in the area. The panel share the concerns of the responsible authorities in this respect and consider that the only appropriate option in this case is revocation of the licence."

The meeting for Item 42 only concluded at 13.30.

Signed

Chair

