

# LICENSING PANEL (Licensing Act 2003 Functions)

## Agenda Item 68

Brighton & Hove City Council

<b>Subject:</b>	<b>Application for a Variation of a Premises Licence under the Licensing Act 2003 for Sainsbury's Supermarket, 147 – 148 Western Road, Brighton</b>		
<b>Applicant (s):</b>	<b>Sainsbury's Supermarkets Limited</b>		
<b>Date of Meeting</b>	<b>14 October 2009</b>		
<b>Report of:</b>	<b>Assistant Director Public Safety</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Emma Bricknell</b>	<b>Tel:</b> 29-4431
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<b>Wards Affected:</b>	Regency		

### FOR GENERAL RELEASE

#### 1. SUMMARY AND POLICY CONTEXT:

- 1.1 To determine an application for a Variation of a Premises Licence under the Licensing Act 2003 for Sainsbury's Supermarket.

#### 2. RECOMMENDATIONS:

- 2.1 To determine an application for a Variation of a Premises Licence under the Licensing Act 2003 for Sainsbury's Supermarket.

##### 2.2.1 The application is for:

A Variation of a Premises Licence under the Licensing Act 2003 for  
The application proposes:

A supermarket selling a broad range of groceries, household products and alcohol. Situated at 147-148 Western Road, Brighton, BN1 2DA.

1. Extension of the hours for the sale of alcohol to 06.00 to 24.00 daily.
2. Provision of late night refreshment between the hours of 11pm and 00.00 midnight.
3. To remove the condition from Annex 2:

##### Condition 11

A "challenge 21" (or equivalent) scheme shall be adopted so that all cashiers are trained to ask any customers attempting to purchase alcohol, who appears to be under the age of 21 years, for evidence of age. The evidence shall be photographic, such

as a passport or photographic driving licence until other effective identification technology (for example thumb print or pupil recognition) is introduced. All cashiers will be instructed, through training, that a sale shall not be made unless the evidence is produced.

4. To add the following condition to Annex 2:

The licence holder shall ensure that all cashiers are trained to ask any customer attempting to purchase alcohol, who appears to be under the age of 21 years (or older if the licence holder so elects) for evidence of age. This evidence shall be photographic, such as passport or photographic driving licence until other effective identification technology (for example, thumb print or pupil recognition) is introduced. All cashiers will be instructed, through training, that a sale shall not be made unless this evidence is produced.

Part P of the application is detailed at Appendix A

Summary table of existing and proposed activities –

	<i>Existing</i>	<i>Proposed</i>
<b>L Late Night Refreshment</b>	N/A	Every day 23:00 – 24:00
<b>M Supply of Alcohol</b>	07:00 – 23:00 Off the Premises	06:00 – 24:00 Off the Premises
<b>O Hours premises are open to public</b>	Every day 12:00 – 12:00	Every day 00:00 – 24:00
<b>P Conditions removed as a consequence of the proposed Variation</b>	<p>3. To remove the condition from Annex 2: Condition 11 A "challenge 21" (or equivalent) scheme shall be adopted so that all cashiers are trained to ask any customers attempting to purchase alcohol, who appears to be under the age of 21 years, for evidence of age. The evidence shall be photographic, such as a passport or photographic driving licence until other effective identification technology (for example thumb print or pupil recognition) is introduced. All cashiers will be instructed, through training, that a sale shall not be made unless the evidence is produced.</p>	

- 2.3 Existing licence attached at Appendix B.

### **3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**

3.1 Cumulative Impact: The premises falls within the Cumulative Impact Area (“the Area”) in the Brighton city centre (see paragraphs Prevention of Crime and Disorder 2.4.10 – 2.4.14 and Appendices C - E).

#### **3.2.1 Representations received**

Details of the representations made are notified to applicants on receipt by the Licensing Authority using a pro-forma. A summary appears below:

3.2.2 One representation was received. It was received from Trading Standards.

3.2.3 The Representation received had concerns relating to Protection of Children from Harm.

3.2.5 Full details of the representation is attached at Appendix F. A map detailing the location of the premises is attached at Appendix G.

### **4. CONSULTATION**

Commentary on licensing policy

4.1 The following extracts from Brighton & Hove Licensing Policy are considered relevant to this application and numbered as they appear in the policy:

#### **General**

1.2 The licensing objectives are:-

- (a) Prevention of crime and disorder;
- (b) Public safety;
- (c) Prevention of public nuisance;
- (d) Protection of children from harm.

1.3 Licensing is about regulating licensable activities on licensed premises, by qualifying clubs and at temporary events. Any conditions attached to various authorisations will be focussed on matters which are in the control of individual licensees and others with relevant authorisations, i.e. the premises and its vicinity.

1.5 Each application will be given individual consideration on its merit. Nothing in this policy shall undermine the right of any individual to apply under the terms of the Act for a variety of permissions and to have any such application considered on its individual merits. Similarly, nothing in this policy shall override

the right of any person to make representations on an application or seek a review of a licence or certificate where provision has been made for them to do so in the Act.

- 1.15 Licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned. Licensing is about the control of licensed premises, qualifying clubs and temporary events within the terms of the Act, and the conditions attached to licences, certificates and permissions will be focused on matters which are within the control of the licensee and will centre on the premises themselves and their immediate vicinity. When considering these terms and conditions the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned.
- 2.4 Cumulative impact – the licensing authority may receive representations from either a responsible authority or an interested party that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives. This should not, however, be confused with ‘need’ which relates more to the commercial demand for a particular type of premises. The issue of ‘need’ is therefore a matter for the market to decide and can, in some circumstances, be a matter for planning consideration; need therefore does not form part of this licensing policy statement.
  - 2.4.1 Special Policy - Cumulative Impact is defined as the potential impact upon the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area.
  - 2.4.2 The licensing authority after careful consideration has determined that the concentration of licensed premises in a small area of the city centre is causing problems of crime and disorder and public nuisance, and that therefore an approach to Cumulative Impact is necessary as part of its statement of licensing policy. This special policy was adopted for inclusion within the statement of licensing policy by Council on 13 March 2008.
  - 2.4.3 This special policy will refer to a Cumulative Impact area (“the Area”) in the Brighton city centre, a detailed plan of which is attached at **Appendix C** of the Statement of Licensing Policy (SoLP).

- 2.4.4 The effect of this special policy is that applications for new premises licences or club premises certificates within the Area, or variations which are likely to add to the existing Cumulative Impact, will normally be refused following relevant representations. This presumption can be rebutted by the applicant if they can show that their application will have no negative Cumulative Impact.
- 2.4.5 Any variation application will potentially come within this special policy, including those for extensions of hours, subject always to an applicant satisfying the authority that there will be no adverse effect on Cumulative Impact.
- 2.4.6 This special policy also applies to all new premises licences and club premises certificates, for example pubs, off-licences, restaurants and take-away establishments.
- 2.4.7 The presumption of refusal does not relieve responsible authorities or interested parties of the need to make a relevant representation. If there are no representations the licensing authority must grant the application in terms consistent with the operating schedule submitted.
- 2.4.8 Furthermore, this special policy is not absolute. Upon receipt of a relevant representation, the licensing authority will always consider the circumstances of each case and whether it is justified in departing from its special policy in the light of the individual circumstances of the case. If an application is unlikely to add to the Cumulative Impact of the Area, it may be granted. The Impact can be expected to be different for premises with different styles and characteristics. For example, while a large nightclub or high capacity public house might add to problems of Cumulative Impact, a small restaurant or theatre may not.
- 2.4.9 If the licensing authority decides that an application should be refused, it will still need to show that the grant of the application would undermine the promotion of one of the licensing objectives and that conditions would be ineffective in preventing the problems involved.
- 2.5.5 Care, control and supervision of premises  
The effective management and supervision of a venue is a key factor in reducing crime and disorder, both within it and outside. The Police will consider the applicants, objecting to the application where appropriate. The Police will suggest crime prevention measures in relation to, for example, the internal layout of the premises, close circuit television, help points, lighting and security staff. The Police may ask for conditions which support such measures to be imposed when planning or

licensing applications are granted, e.g. type of licence, capacity, opening time restrictions.

- 2.6 Shops, stores and supermarkets which provide alcohol for consumption off the premises: the normal scenario will be to provide for sales of alcohol at any time when the retail outlet is open for shopping unless there are very good reasons for restricting those hours.
- 2.8 Enforcement issues will be considered in the light of any relevant enforcement policies and close links will be sought between all enforcing authorities, e.g. through the use of intelligence sharing and strategy groups. Such protocols may lead to the targeting of agreed high risk and problem premises whilst permitting a lighter touch approach in respect of well run premises.

**In respect of the protection of children from harm**

- 5.1 Licensees should note the concern of the authority that drink related disorder frequently involves under 18's. To prevent illegal purchases of alcohol by such persons, the committee recommend that all licensees should work with a suitable 'proof of age' scheme and ensure that appropriate identification is requested prior to entry and when requesting alcohol, where appropriate. Appropriate forms of identification are currently considered to be those recommended by police, trading standards officers and their partners in the licensing strategy group.
- 5.2 It is the committee's expectation that all staff responsible for the sale of intoxicating liquor receive information and advice on the licensing laws relating to children and young persons in licensed premises. Licensed premises staff are required to take reasonable steps to prevent under age sales. The licensing authority will not seek to limit the access of children to any premises unless it is necessary for the prevention of physical, moral or psychological harm to them.
- 5.4 The licensing authority will not seek to require that access to any premises is given to children at all times – under normal circumstances this will be left to the discretion of the licensee. The following areas give rise to concern in respect of children, who will normally be excluded from premises:-
- where there have been convictions for serving alcohol to minors or with a reputation for underage drinking;
  - with a known association with drug taking or dealing;
  - where there is a strong element of gambling on the premises;

- where entertainment of an adult or sexual nature is commonly provided.
- where premises are used primarily or exclusively for the sale and consumption of alcohol and there is little or no seating for patrons.

Options may include:-

- limitations on the hours when children may be present;
- age limitations (below 18);
- limitations or exclusions when certain activities are taking place;
- requirements for an accompanying adult;
- full exclusion of people under 18.

5.5 Licensees of premises giving film exhibitions will be expected to include in their operating schedules arrangements for restricting children from viewing age restricted films. Such premises will be subject to a mandatory condition requiring that access will be restricted to only those who meet the required age limit in accordance with any certificate granted by the British Board of Film Classification, or in specific cases where such certificates have not been granted, the licensing authority. The licensing authority does not intend to adopt its own system of film classification.

5.6 Where children are expected to attend a public entertainment, appropriate adult supervision will be required to control the access and egress of children and to protect them from harm. This will normally be an adult member of staff for every 100 children. Where the entertainment is music and dancing, 2 persons, licensed by the Security Industry Authority (door supervisors) should be employed for every 100 children. Nothing in this policy shall seek to override child supervision requirements contained in other legislation or regulations. The licensing authority recognises the Children, Families and Schools section as being competent to advise on matters relating to the protection of children from harm.

#### **Strategic Integration**

6.5 Specific conditions may be attached to premises licences to reflect local crime prevention strategies. Such conditions may include the use of closed circuit television cameras, the provision and use of shatterproof drinking receptacles, drugs and weapons search policy, the use of registered door supervisors, specialised lighting requirements, hours of opening.

6.7 This policy avoids duplication with other regulatory regimes wherever possible.

## **5. FINANCIAL & OTHER IMPLICATIONS:**

### **5.1 Financial Implications:**

The Licensing Act 2003 provides for fees to be payable to the licensing authority in respect of the discharge of their functions. The fee levels are set centrally at a level to allow licensing authorities to fully recover the costs of administration, inspection and enforcement of the regime.

*Finance Officer Consulted: Karen Brookshaw      Date: 24.09.2009*

### **5.2 Legal Implications:**

The licensing authority must act to promote the four licensing objectives which are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

The licensing authority must have regard to its statement of licensing policy and the guidance issued by the Secretary of State in carrying out its functions.

*Lawyer Consulted: Rebecca Sidell                      Date: 24.09.2009*

### **5.3 Equalities Implications:**

Diversity is valued and strong, safe communities are vital to future prosperity. Licensing policy aims to protect children from harm including sale and supply of alcohol to children.

### **5.4 Sustainability Implications:**

Licensing policy aims to prevent public nuisance and develop culture of live music, dancing and theatre.

### **5.5 Crime & Disorder Implications:**

Licensing policy aims to prevent crime and disorder and protect public safety.

### **5.6 Risk and Opportunity Management Implications:**

Licensing is a crucial business and employment opportunity and unnecessary regulation might lead to legal challenge.



## 5.7 Corporate / Citywide Implications:

The success of the city's tourism strategy requires a safe, attractive city centre to improve competitiveness. The Act may significantly change night time economy.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Appendix A – Part P of application
2. Appendix B – Part A of Premises Licence
3. Appendix C – Brighton & Hove City Council – Special Stress Areas
4. Appendix D – Measures to be considered in SSA's
5. Appendix E – Brighton & Hove City Council - Cumulative Impact Area
7. Appendix F – Representation
8. Appendix G – Map of area

### **Documents in Members' Rooms**

1. Environmental Health & Licensing Service, Brighton & Hove City Council (2008): The Licensing Act 2003 – Brighton & Hove City Council: Statement of Licensing Policy.

### **Background Documents**

1. Environmental Health & Licensing Service, Brighton & Hove City Council (2008): The Licensing Act 2003 – Brighton & Hove City Council Statement on Licensing Policy.