

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

10.00am 16 FEBRUARY 2009

COMMITTEE ROOM 3, BRIGHTON TOWN HALL

MINUTES

Present: Councillor Mrs C Theobald (Chairman); Marsh and Simson

Officers: Tim Nichols (Head of Environmental Health & Licensing), Rebecca Sidell (Lawyer) and Jane Clarke (Democratic Services Officer)

PART ONE

106. TO APPOINT A CHAIRMAN FOR THE MEETING

106.1 Councillor Mrs Theobald was appointed Chairman for the meeting.

107. PROCEDURAL BUSINESS

107a. Declaration of Substitutes

107.1 There were none.

107b. Declarations of Interest

107.2 There were none.

107c. Exclusion of the Press and Public

107.3 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Licensing Panel considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I(1) of the Act).

107.4 **RESOLVED** – that the press and public be not excluded from the meeting.

108. THE BLACK HORSE, 16-17 MONTAGUE PLACE, BRIGHTON, BN2 1JE

- 108.1 The Panel considered a report of the Assistant Director of Public Safety regarding an application for Review of a Premises Licence under the Licensing Act 2003 for The Black Horse, 16-17 Montague Place, Brighton, BN2 1JE.
- 108.2 Mr Grant, Barrister to the Premises Licence Holder (Admiral Taverns) attended the hearing to make representations in favour of the Premises Licence being retained. Mr Savill, Barrister for Sussex Police, Inspector Harris and Ms Irving of Sussex Police, and Ms Lynsdale and Ms MacBeth from Brighton & Hove Trading Standards Office attended the hearing to make representation against the retention of the Premises Licence.
- 108.3 The Head of Environmental Health and Licensing summarised the application as set out in the report and highlighted that the practice of test purchasing was supported in licensing policy. In this instance, the Panel Members had six options available to them:
- a) Take no action;
 - b) Exclude a licensable activity;
 - c) Modify conditions;
 - d) Remove the Designated Premises Supervisor;
 - e) Suspend the licence for a period not exceeding three months; or
 - f) Revoke the licence.

He also highlighted that recent central government guidance stated that tough conditions could be placed on premises where there was a significant concern that the licensing objectives were not being upheld. These conditions could include the removal of the Designated Premises Supervisor and/or suspension of the licence in the first instance and revocation of the licence in the second.

- 108.4 Mr Savill began his representation on behalf of Sussex Police and stated that the application for review was a comprehensive and compelling case against the Premises Licence Holder and provided ample evidence for revocation of the licence.

He stated that Sussex Police were first aware of problems at the premises in November 2007 when alcohol was served to underage children at a birthday party held on the premises. As a result of this, three test purchase operations were arranged over the course of 2008 and each operation failed. Members of staff were interviewed and it became evident that no age checks were being performed before the sale of alcohol and no training had been received by certain members of staff in regard to this. Further problems occurred and the Designated Premises Supervisor (DPS) and members of staff were on occasions found drunk on the premises.

Mr Savill stated that in August 2008 a meeting between Sussex Police, Brighton & Hove Trading Standards, the Area Manager and the Designated Premises Supervisor took place after the second failed test purchase. Sussex Police warned the concerned parties that they would apply for a review of the licence if the premises failed a further

test purchase operation. The premises did fail a further operation in October 2008 and Sussex Police subsequently applied for a review of the licence.

Mr Savill stated that it is the belief of Sussex Police that the DPS is incompetent and unfit to manage a licensed premises and that the management of the Premises Licence by Admiral Taverns has been at best inadequate, and at worst negligent. It was noted that although the Premises Licence Holder (PLH) had been aware of the problems at the premises since August 2008, the first time they contacted Sussex Police about the premises was February 2009, after the review application had been submitted.

Mr Savill felt there had been a wholesale failure on the part of the company to deal with the deficiencies in management at the premises, and it was a matter of extreme concern to the police that neither the Designated Premises Supervisor, nor the Premises Licence Holder seemed able to deal appropriately with the issue of underage sales. Due to the complete failure to resolve these issues by both parties Sussex Police felt that a complete change in management of the premises was needed. Therefore they were requesting that the Panel Members revoke the premises licence.

- 108.5 Ms MacBeth from the Brighton & Hove Trading Standards Office began her representation by stating that the premises only employed three members of staff and all three had failed a test purchase operation. She noted that the premises was not large and felt that it would be obvious for members of staff to spot under-aged drinkers. However, the bar seemed to be designed to attract a young crowd and it was her opinion that that the premises was purposefully targeting a young clientele, and was well known in the area as a place for under-age drinkers to purchase alcohol. There seemed to be no awareness of the problems and issues surrounding under-age alcohol sales and no system of reporting problems to the PLH. The Trading Standards Office supported the police's request for revocation of the premises licence.
- 108.6 Mr Grant, on behalf of the Premises Licence Holder, Admiral Taverns, began his representation and stated that the PLH agreed with the representation given by Sussex Police and admitted that the company had not acted quickly enough to resolve this matter. He stated that the PLH had started forfeiture proceedings to remove the DPS from the premises. He noted that he could not request the Panel to remove the DPS from the premises as this could interfere with their forfeiture proceedings and may leave them open to appeal. Therefore, they were requesting that strict conditions be attached to the licence to enable them to closely monitor the premises whilst forfeiture proceedings were taking place. Mr Grant felt that revocation of the licence was unnecessary and disproportionate at this stage.
- 108.7 The Chairman asked when the PLH was aware of the behaviour of the DPS and Mr Grant replied that it was not until 14 August 2008, as previous notifications of failed test purchase had not been forwarded by the DPS to the PLH.
- 108.8 The Chairman asked if the PHL had another DPS in mind for the establishment and Mr Grant replied that efforts were underway to change the DPS. They were not seeking at this time to remove the other members of staff that had failed test purchases as Mr Grant felt that these staff would take their lead from a new DPS.

- 108.9 A Panel Member asked how long the DPS had been involved in the establishment and Mr Grant replied that it was at least since November 2005 when Admiral Taverns had taken over the Premises Licence.
- 108.10 A Panel Member asked Mr Grant to confirm that if the DPS was no longer involved in the premises he would have to move out of the flat situated above. Mr Grant confirmed this was the case and stated that this was why they could not ask for his removal as this would effectively make him homeless and the PLH had a duty towards the DPS which did not allow this.
- 108.11 A Panel Member asked whether the Area Manager had any influence over the operation of the premises and Mr Grant confirmed that they had none, and was available for support and education purposes only. They could not accept conditions on a licence on behalf of the DPS and had no say in how the premises were operated.
- 108.12 A Panel Member asked how long it usually took to initiate forfeiture proceedings for problem premises and Mr Grant replied that it was a difficult decision to make and was taken at board level. He explained that there had been several changes internally within the company and after these structural changes had taken place the matter had been considered at the next possible board meeting.
- 108.13 A Panel Member expressed concern that some of the suggested conditions from Admiral Taverns were contradictory and, if accepted, felt that this would quickly lead to a breach of licensing conditions. Mr Grant replied that the new DPS would ensure the licence conditions would not be breached and Admiral Taverns would be much more involved in the management of the premises.
- 108.14 Mr Savill asked when the forfeiture proceedings were started and whether the DPS had a right to appeal the proceedings. Mr Grant confirmed that the decision had been made in early February and assumed that the DPS would be able to appeal any decision made by the courts.
- 108.15 A Panel Member asked Mr Grant to confirm that if the DPS was removed from the premises would he still be living in the flat above and able to manage the premises. Mr Grant agreed that this was the case but noted that the Panel were able to exclude named individuals from a licensed premises.
- 108.16 The Trading Standards Officer asked how Admiral Taverns were intending to ensure that the licence conditions were met when they had no authority to do so. Mr Grant confirmed that the PLH would ensure the conditions were met by appointing a new responsible DPS to the position, and noted that this was common practice across the industry. He stated that the police had to approve the application for a new DPS and could object if they felt the new person was unsuitable for the premises.
- 108.17 The Head of Environmental Health and Licensing began his final submission by noting that the current DPS had been in place before Admiral Taverns took over the premises licence. He stated that the issue of underage sales was a serious concern for the government and for the local council and if the Panel were minded to place extra conditions on the licence then they should refer to licensing policy. A first licence

review would normally result in the removal of the DPS and possible suspension of the licence, whilst revocation was usually an option for second reviews.

108.18 Mr Savill began his final submission by stating that all authorities were instructed to use review powers to uphold the Prevention of Crime and Disorder objective. The current set up of this premises was not promoting this objective and was also undermining the objective of Prevention of Children From Harm. He felt that the PLH had demonstrated a lack of responsibility towards the premises, and the police were concerned about the list of conditions proposed, some of which were already on the premises licence and seemed to be ineffective in this instance.

Mr Savill felt that it was inconceivable that the first available board meeting since Aug 2008 was in February 2009 and stated that the PLH had done too little, too late, to resolve the ongoing problems at this premises. It was the view of the police that neither party had acted responsibly in this matter. They were not convinced that the PLH was able to resolve existing problems and prevent further problems occurring at the premises. As such the police were requesting that the licence be revoked.

108.19 Mr Grant began his final submission by agreeing with the criticisms of the police but stating that revocation was not the only way to resolve the problems at the premises and that this would be a disproportionate action at this stage. He felt that the conditions proposed would be a much better course of action and stated that the PLH were happy to accept any other conditions the Panel felt necessary to impose in order to uphold the licensing objectives.

108.20 **RESOLVED** – that the Designated Premises Supervisor be removed from the management of the premises. Further that the following conditions are imposed on the licence:

1. No person under the age of 18 is permitted to enter or remain on the premises unless accompanied by a responsible adult.
2. Any person appearing to be under the age of 25 and purchasing or drinking alcohol within the premises is required to provide proof of age by the production of a passport or photo driving licence or a PASS approved identification (save for customers known to have already provided such proof of age in the past) (i.e. a Challenge 25 policy).
3. The premises is to adopt and implement a "Challenge 25" policy as approved by the police and/or trading standards officers.
4. Challenge 25 notices must be displayed in prominent positions throughout the premises as approved by police and/or trading standards officers.
5. The premises shall keep and maintain an incident and refusals log (including details of all refusals to serve alcohol due to age-related concerns). This log is to be kept at the premises and made available to police and local authority officers upon request.
6. The premises is to adopt and implement a formal written policy on underage sales.
7. All staff involved in the sale of alcohol to be trained and refreshed on prevention of under-age sales at least every 12 months. Any new member of staff had to be similarly trained within 7 days of starting their employment at the premises. Records of such training must be kept at the

- premises and made available to police and local authority officers upon request.
8. A Personal Licence Holder is to be on site at all times during the sale of alcohol.
 9. Alcohol sales only to be made by a person not less than 25 years of age.

The Premises Licence shall be suspended for a period of three months during which time no sales of alcohol shall take place for the reason given below:

“The Panel decided to take this action because of the extremely serious and persistent breaches of the Licensing Act objectives of Prevention of Crime and Disorder and Protection of Children from Harm. The Panel feels that the poor management of the premises goes beyond the Designated Premises Supervisor to include the Premises Licence Holders, and therefore strong action is needed to ensure that the Licensing Objectives will be upheld.”

109. BOWLPLEX, BRIGHTON MARINA VILLAGE, BRIGHTON, BN2 5UT

- 109.1 This item was withdrawn from this agenda.

The meeting concluded at 12.00pm

Signed

Chairman

Dated this

day of