

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

2.00pm 1 JUNE 2009

COMMITTEE ROOM 3, BRIGHTON TOWN HALL

MINUTES

Present: Councillors Lepper, Older and C Theobald

Officers: Jim Whitelegg (Senior Environmental Health Officer), Rebecca Sidell (Lawyer) and Jane Clarke (Democratic Services Officer)

PART ONE

1. TO APPOINT A CHAIRMAN FOR THE MEETING

- 1.1 Councillor Mrs Theobald was appointed Chairman for item 3, Three to Four, 3-4 Western Road, Hove.
- 1.2 Councillor Lepper was appointed Chairman for item 4, Mesopotamia, 17 York Place, Brighton.

2. PROCEDURAL BUSINESS

2a Declarations of Substitute Members

- 2.1 There were none.

2b Declarations of Interest

- 2.2 There were none.

2c Exclusion of the Press and Public

- 2.3 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).

- 2.4 **RESOLVED** – That the press and public be not excluded.

3. THREE TO FOUR, 3-4 WESTERN ROAD, HOVE

- 3.1 The Panel considered a report from the Assistant Director of Public Safety regarding a review of a premises licence for Three to Four, 3-4 Western Road, Hove, BN3 1AE.
- 3.2 Mr Savill, Barrister representing Sussex Police, Ms Irving and Inspector Harris attended to make representations on behalf of the applicant, Sussex Police. Ms MacBeth and Ms Player from Trading Standards attended to make representations in favour of the review application. Ms Abou El Kheir, the Designated Premises Supervisor (DPS)/Premises Licence Holder (PLH) for the premises, and her representative, Mr Simmonds, attended the hearing to make representations against the review application.
- 3.3 The Senior Environmental Health Officer began by summarising the report and stating that a request for review of the licence had been submitted by Sussex Police on the grounds of Protection of Children from Harm and Prevention of Crime and Disorder. The premises had failed three test purchase operations conducted by Trading Standards, and Sussex Police were now seeking for the licence to be suspended for three months and for additional conditions to be attached to the licence.

The Senior Environmental Health Officer informed the Panel that the options open to them were to modify the conditions of the licence; to exclude a licensable activity; to remove the Designated Premises Supervisor; to suspend the licence for a period not exceeding three months; or to revoke the licence.

- 3.4 The Chairman asked all parties if they had any questions of the statement from the Senior Environmental Health Officer. There were none.
- 3.5 Mr Savill began his representation on behalf of Sussex Police and stated that the premises had failed three test purchase operations between 9 February 2009 and 30 March 2009. He referred to guidance issued by the Department of Culture, Media and Sport regarding the Licensing Act 2003, which stated that premises that sold alcohol to minors should be considered a particularly serious problem. The Council's Statement of Licensing Policy also supports this view.

The first failed test purchase operation had taken place on 9 February 2009, with alcohol being served to a minor whilst the seller was making a phone call. No ID had been asked for, and when questioned about the incident, the seller stated that he had received no real training regarding underage sales of alcohol. A warning letter had been written on 10 February 2009 but a further failed test purchase operation had occurred on 2 March 2009. In this circumstance the seller was the daughter of the DPS/PLH. When the transaction had taken place, it was noted that the seller had called upon the assistance of another member of staff, who also failed to ask for ID. A meeting was set up after the second failure and training was arranged with Trading Standards, which took place on 19 March 2009. However, a third failed test purchase occurred on 30 March 2009, with the same member of staff from the first failed test purchase as the seller.

Mr Savill stated the Police believed that the late training of staff and the failure of the premises management to enforce the messages of the training indicated a lack of responsibility and effective management of the premises. He also indicated that there

were problems with the internal layout of the premises, which indicated a confused approach.

Mr Savill went on to say that the Police were requesting a suspension of the licence to allow an appropriate amount of time for implementation of correct procedures to be put in place before the selling of alcohol, to break the association of the premises with underage sales and to act as a deterrent to the premises management and staff in allowing such problems to continue.

Further conditions were also suggested and included in the Police application. Mr Savill noted that the condition to ensure there was a DPS or Personal Licence Holder on site at all times during the sale of alcohol was a stringent condition, however, the Police felt it necessary given the history of the premises and that none of the staff currently held personal licences.

Mr Savill stated that the premises was a family owned and run business and on each three occasions that a test purchase was failed, the seller had been a member of the DPS/PLH's family. He noted that in such situations, disciplinary procedures for staff were not as rigorous as in other establishments. This gave the Police cause for concern, and as such they were requesting a suspension period to allow time for the proper procedures to be put in place and followed.

- 3.6 The Chairman asked all parties if they had any questions regarding Mr Savill's representation.
- 3.7 Mr Simmonds asked Mr Savill to confirm that after the incident on the 30 March 2009, a mediation meeting had been requested by the DPS/PLH with the Police and Trading Standards to resolve the issues. Mr Savill confirmed that this was correct.
- 3.8 Ms MacBeth from Trading Standards began her representation and stated that the general area in which the premises was situated was well known for alcohol-related youth disorder problems. The premises had failed every test purchase, even though a sufficient amount of time had been left between each operation to allow training and procedures to be put into place. Correspondence offering advice, training and guidance had been left at the premises after each failure, and whilst the DPS/PLH had arranged for Trading Standards training to take place after the second operation, only five members of staff had been present out of approximately 10 who worked there.

Ms MacBeth expressed concern that family members had failed the test purchases, as she believed it was likely these members of staff were not under the direct control of the premises management, and so properly disciplinary procedures could not take place.

Methods had been suggested by Trading Standards to help staff remember to ask for ID, including a till prompt system, but the tills in the premises were unfortunately too old to be modified for this. A second suggestion from Trading Standards had been to remove the prices from the barcodes of alcoholic drinks in the establishment, in order that the staff would have to enter the prices manually. It was believed that this manual inputting would act as a prompt for staff to ask for ID.

It was apparent that this second suggestion had now been put in place at the premises, but Trading Standards had not been updated of the situation until the day of the Panel meeting. Ms MacBeth expressed concern however, in that it was her belief that the staff members were likely to know the prices of the products, and would be able to ring them in without pause in the selling process. She stated that Trading Standards believed the management of the premises had shown naivety in understanding the seriousness of the failures and had failed to get to grips with managing the premises properly.

- 3.9 The Chairman asked if there were any questions about Ms MacBeth's representation.
- 3.10 Mr Simmonds asked to clarify a point about the till system and stated that that the DPS/PLH was considering purchasing a new till system that would including a till prompt, but was awaiting the outcome of the review.
- 3.11 Mr Simmonds began his representation on behalf of the DPS/PLH and noted that this was a family run business and that those members of staff who had attended the Trading Standards training were identified as those who needed it the most, and who served alcohol in the premises.

The business had been in operation since 2007 and although no formal records of training had been taken, Mr Simmonds asserted that training from the DPS/PLH had taken place on a regular basis. In the view of the DPS/PLH the business had been running correctly and smoothly and the staff had not highlighted any problems regarding training or the selling of alcohol. She had been disappointed and surprised by the first failed test purchase, but had immediately organised an internal training session with staff members and a verbal warning to the staff member involved, although neither of these were recorded. The DPS/PLH had not felt it was appropriate to escalate things further at that stage.

When the second failed test purchase occurred, further internal training was organised, and the offer of training with Trading Standards was taken up. A final warning was given to staff members to ensure that they did not sell alcohol to minors in the future.

The DPS/PLH recognised that the third failure was a very serious mistake, but had been proactive in arranging for Mr Simmonds to act as her agent and provide her with advice and guidance on how to proceed. Further measures to prevent the selling of alcohol to minors were put in place, including introducing the Challenge 25 policy and new posters on the prevention of the sale of alcohol to minors in the premises, and the CCTV system was reviewed.

Further training had taken place, and four staff members were now in a position to take the Personal Licence Holder course. The member of staff who had sold alcohol to a minor on two occasions had been removed from front of house service, the till system had been reviewed, the prices of alcohol removed to aid as a prompt to staff and the Refusals Book was now being used frequently and kept up-to-date.

Mr Simmonds stated that the DPS/PLH still felt her actions were appropriate to the circumstances, but was ready to agree with most of the conditions suggested by Sussex Police. He felt however that the condition to require a DPS or Personal Licence Holder to be on site at all times would be difficult for the premises to comply with, as if the DPS

or Personal Licence Holder needed a break or needed to leave the premises for a short amount of time, alcohol sales would have to cease for this period. He asked for the wording of the condition to be modified to allow short breaks to take place without the need for ceasing the trade of alcohol.

Finally, Mr Simmonds stated that the DPS/PLH had not been complacent and had acted quickly in response to each incident, and lessons had been learned to ensure that the problems did not occur again. He stated that suspension of the licence was unnecessary in this instance, and would only serve as a punishment to the establishment, which the Licensing Act guidance advised against. The establishment was now in order and running effectively and therefore there was no purpose in suspending the licence.

- 3.12 The Chairman asked what the opening hours of the premises were and Ms Abou El Kheir replied that it was open 24 hours a day.
- 3.13 The Chairman clarified that only five staff members were available to sell alcohol 24 hours a day and Mr Simmonds confirmed this, stating that at peak times two staff would be available.
- 3.14 Councillor Older expressed concern over the low number of staff available to serve alcohol. She noted also that on 30 March 2009 a staff member had stated that there was no problem with underage drinkers buying alcohol at the premises, Councillor Older asked if Ms Abou El Kheir agreed with this. Ms Abou El Kheir stated that she did, and that underage drinkers were not a particular problem for her premises. She felt that her main custom was from older people.
- 3.15 Councillor Older asked how long the staff member who failed two test purchases had been working at the premises. Ms Abou El Kheir stated that he had worked at the premises for one year.
- 3.16 Councillor Older noted that on the statement from this staff member given to Trading Standards immediately after the failed test purchase operation, he had ticked a box to indicate he received physical, verbal and racial abuse whilst performing his job. She asked if this was correct, and whether it was an indication of deeper problems at the premises. Mr Simmonds replied that they were not sure why this box had been ticked, and suggested that the staff member may not have understood the question. He also stated that customers could become abusive if refused alcohol and he had personally witnessed this at the premises.
- 3.17 Councillor Lepper asked why all the measures to prevent the sale of alcohol to minors had been put in place so recently. Mr Simmonds replied that the DPS/PLH had believed that there were no problems at the premises previously, but had taken action when the failed test purchases occurred. He felt this indicated a responsible approach to the problems, and noted that the DPS/PLH believed the actions she had taken would resolve the problems.
- 3.18 Councillor Lepper asked why the extra measures, including changing the till system and the Challenge 25 policy were not put in place after the first failed test purchase operation. Mr Simmonds replied that the DPS/PLH had taken a graduated response to

the situation and escalated her measures each time the premises had failed a test purchase. He believed the premises was now in a position and at a standard to absolutely ensure that further test purchase operations would not fail. He stated that a three month suspension was inappropriate because the chain of events leading to the failures had already been broken and there were now no further problems at the premises.

- 3.19 Councillor Lepper expressed concern over the current layout of the premises, and asked if some alcohol was not in the direct line of sight of the seller. Mr Simmonds agreed that some areas of the shop were not as easily monitored as others, and the DPS/PLH had considered rearranging the shop floor, but this would be expensive and there was no evidence that shop-lifting was a problem at these premises.
- 3.20 Councillor Lepper asked Ms Abou El Kheir to confirm who had undertaken training to serve alcohol. Ms Abou El Kheir stated that five members of staff had taken the Trading Standards training, and three had taken training to allow them to take their Personal Licence Holder certificate.
- 3.21 Councillor Lepper asked what the situation would be for new staff in terms of training. Mr Simmonds stated that a proposed condition from Sussex Police covered the training of new staff, although he felt that the condition needed to include what standard the training should meet.
- 3.22 The Chairman asked if there were any questions about Mr Simmonds' representation from the responsible authorities and interested parties.
- 3.23 Mr Savill asked which members of staff the warning letter dated 3 March 2009 was sent to. Mr Simmonds replied that it had been addressed to both members of staff who had failed the test purchase operations.
- 3.24 Mr Savill asked whether the member of staff who had failed two test purchases had undertaken Personal Licence training, and if so, when this was. Mr Simmonds confirmed that this was undertaken on 19 May 2009.
- 3.25 Mr Savill asked why this training had occurred when this member of staff was prohibited from selling alcohol on the premises. Mr Simmonds replied that this was done for staff development purposes and confirmed that it was likely that this member of staff would be selling alcohol again at some point in the future.
- 3.26 Mr Savill asked why this training was not left until the point at which it was decided to reintegrate this staff member back into the front of house team. Mr Simmonds stated that it was felt that this training would be beneficial immediately.
- 3.27 Mr Savill asked if of the four Personal Licence Holders that would be available at the premises, one of them would be the member of staff who had failed two test purchases. Mr Simmonds confirmed this.
- 3.28 Mr Savill asked if this training was an indication that this member of staff would be selling alcohol at the premises in the near future. Mr Simmonds stated that there was no

proposed timescale for when this member of staff would be reintegrated into the front of house staff.

- 3.29 Mr Savill asked if the DPS/PLH was aware that this member of staff may be summonsed regarding his actions, and Mr Simmonds confirmed that she was.
- 3.30 Mr Savill stated that this member of staff had indicated after the second failed test purchase operation that he had not received any training other than the training provided by Trading Standards. He asked how this could be when the DPS/PLH had confirmed that she had give staff training before and in between the incidents. Ms Abou El Kheir stated that she believed this member of staff had been confused about what constituted training, and was indicating that he had only received formal training from Trading Standards Officers, as he did not think the in-house training she had provided qualified as training.
- 3.31 Mr Savill asked what steps the DPS/PLH took between 9 February 2009 and 30 March 2009 to prevent further sales of alcohol to minors. Mr Simmonds replied that in-house training had taken place.
- 3.32 Mr Savill asked if there was a record of this training and Ms Abou El Kheir stated that she did not have a record for this particular member of staff with her.
- 3.33 Mr Savill asked why this had not been brought to the meeting, given that this member of staff had failed the test purchase operations twice. Ms Abou El Kheir stated she did not think it was relevant as the member of staff in question was no longer serving alcohol in the shop.
- 3.34 Mr Savill noted that when questioned about training by Trading Standards Officers, the staff member had not mentioned any in-house training he had undertaken at the premises, and asked why this was. Ms Abou El Kheir replied that the staff member did not understand that her training sessions could be considered as formal training sessions.
- 3.35 Mr Savill stated that several steps had been suggested by Trading Standards Officers in their letter to the premises on 10 February 2009 to ensure that these problems did not occur again, and asked which of these steps had been taken by the DPS/PLH. Mr Simmonds replied that most had been put in place by the premises and were in operation now.
- 3.36 Mr Savill asked why the DPS/PLH had requested training from Trading Standards only after the second failed test purchase operation. Mr Simmonds replied that the letter had stated that either Trading Standards or the DPS of the premises could provide training to staff, and so the DPS/PLH had decided to conduct the training herself initially.
- 3.37 Mr Savill stated that at the mediation meeting with the Police and Trading Standards Officers, the DPS/PLH had been asked what measures had been put in place to prevent the selling of alcohol to minors, and had not mentioned any training conducted in-house. Mr Savill asked why this was and Ms Abou El Kheir replied that she was not aware this was necessary at the meeting and was not asked directly about training provided.

- 3.38 Ms MacBeth from Trading Standards asked who was currently selling alcohol at the premises. Ms Abou El Kheir replied that four family members were currently selling alcohol plus two staff members who were not family.
- 3.39 Ms MacBeth stated that five members of staff had attended the Trading Standards training, and asked who these staff were. Ms Abou El Kheir confirmed that three of the staff members who attended the Trading Standards training were not selling alcohol at the premises in question, one staff member had been removed from selling alcohol, and one was currently selling alcohol at the premises.
- 3.40 Ms MacBeth asked when the members of staff responsible for the underage sales received final warnings. Ms Abou El Kheir replied that one was issued on 10 February 2009 and one on 5 March 2009.
- 3.41 Ms MacBeth asked why the member of staff who received the final warning on 10 February 2009 continued to work in the shop, as he had again sold alcohol to a minor on 30 March. Mr Simmonds replied and stated that due to the family nature of the business, disciplinary procedures worked differently, but the member of staff had been removed from the shop floor and disciplined as appropriate.
- 3.42 Ms MacBeth asked if the DPS/PLH had attended the Trading Standards training and Ms Abou El Kheir replied she had not as she had been working at the time.
- 3.43 Ms MacBeth asked what language the training was offered in, and Ms Abou El Kheir confirmed that it was offered in both English and Turkish.
- 3.44 Ms MacBeth asked if the DPS/PLH would agree that the standard of English for some members of her staff was not good, and Ms Abou El Kheir agreed.
- 3.45 Ms MacBeth asked if the DPS/PLH was aware that test purchase operations were being carried out at other establishments in the area at that time, and that other premises had failed the operations. Ms Abou El Kheir stated that she was not aware of this.
- 3.46 The Senior Environmental Health Officer began his final statement and noted that in November 2008 the Council had adopted proposals in the DCMS guidance paper 'Problem Premises on Probation', which included a list of possible tough conditions to attach to licences where severe problems were occurring. He stated that the guidance was clear when referring to problem premises and revocation could be used in the first instances if the situation was sufficiently serious. The Senior Environmental Health Officer added that the Licensing Panel should seek to find out the cause of the problems and determine what action to take in response to this. The action taken should be balanced, fair and proportionate.
- 3.47 Mr Savill began his final representation and stated that the premises had failed three test purchases in less than two months. He also referred to the DCMS guidance on problem premises, but noted that in this instance the Police were not asking for revocation but firmly believed suspension was fair and proportionate. The Police lacked confidence in the DPS/PLH to run the premises properly.

Mr Savill recognised that some steps had been taken to rectify the problems following the hiring of Mr Simmonds as a Licensing Agent, but the Police felt it should not be up to outside agents to undertake the responsibility of raising the standards of the premises to an appropriate level. He noted there had been no substantial steps taken prior to the hiring of Mr Simmonds.

Mr Savill referred to a previous statement from the DPS/PLH where she stated that the premises did not have a problem with underage sales of alcohol, and felt this indicated a confused approach to the management of the premises as there was evidence to the contrary. The DPS/PLH had not mentioned internal training to Trading Standards Officers when directly asked about training undertaken by staff members. Mr Savill believed that this suggested none been conducted.

The prohibition on the member of staff who failed two test purchase operations was not fixed to a timescale, which suggested that he would be selling alcohol in the near future. Finally the Police did not feel there was any evidence to suggest confidence in the proper management of the premises.

3.48 Ms MacBeth confirmed that Trading Standards agreed in full with the conclusions of Sussex Police, and supported their application for review.

3.49 Mr Simmonds made his final representation and stated that training had taken place in the establishment, although it was not formally recorded. The DPS/PLH had conducted a risk assessment after each incident and put into place actions that she felt were appropriate. The DPS/PLH was happy to put into place the conditions suggested by Sussex Police, with minor amendments, but did not feel any suspension period was necessary. Mr Simmonds asked the Panel to take direct and appropriate action, and to not place an undue financial burden on the premises as a result of their decision.

3.50 **RESOLVED** – That the panel has decided to take the following action in respect of the review application:

Due to the seriousness of the three failed test purchases we are not confident staff who sell alcohol are sufficiently aware of the laws and regulations relating to underage sales of alcohol, therefore we have agreed to suspend the licence for six weeks to enable formal training to take place for every member of staff who may sell alcohol on the premises, and to break the association with underage alcohol sales at the premises. Furthermore, we feel that this training should not be undertaken by the DPS, but by an external body to the satisfaction of the licensing authority.

We also consider suspension is necessary to promote the licensing objectives of Prevention of Crime and Disorder and Protection of Children from Harm and is necessary in the interests of the wider community

We further agree that the conditions specified by Sussex Police be placed on the licence as follows:

1. Digital CCTV and appropriate recording equipment to be installed, operated and maintained throughout the premises internally to cover all public areas with sufficient numbers of cameras as agreed with Sussex Police. CCTV footage will be stored for

a minimum of 28 days, and the management will give full and immediate cooperation and technical assistance to the Police in the event that CCTV footage is requested for the prevention and detection of suspected or alleged crime. The CCTV images will record and display dates and times, and these times will be checked regularly to ensure their accuracy and will be changed when British Summer Time starts and ends.

2. The DPS or a personal licence holder will be on the premises at all times that alcohol is available for sale.
3. The premises will operate a Challenge 25 policy whereby any person attempting to buy alcohol who appears to be under 25 will be asked for photographic ID to prove their age. The only forms of ID that will be accepted are passports, driving licences with a photograph, or Portman Group, Citizen Card or Validate proof of age cards bearing the PASS mark hologram. The list of approved forms of ID may be amended or revised with the prior written agreement of Sussex Police and the Licensing Authority without the need to amend the licence or conditions attaching to it.
4. Suitable and sufficient signage advertising the Challenge 25 policy will be displayed in prominent locations in the premises.
5. All staff members engaged, or to be engaged, in the selling of alcohol on the premises shall receive the following training in age-restricted sales:
 - Induction training which must be completed, and fully documented, prior to the sale of alcohol by the staff member, and refresher training thereafter at intervals of no less than 8 weeks.
 - All age-restricted sales training undertaken by staff members shall be fully documented and recorded. All training records shall be made available to Sussex Police and Brighton & Hove Trading Standards Service upon request.
6. The premises shall at all times maintain and operate an age-restricted sales refusals book, which shall be reviewed by the DPS at intervals of no less than four weeks and feedback given to staff as relevant. This refusals book shall be available upon request to Police staff, Local Authority staff and Trading Standards.

Signed

Chairman

Dated this

day of

4. MESOPOTAMIA, 17 YORK PLACE, BRIGHTON

- 4.1 The Panel considered a report of the Assistant Director of Public Safety regarding a review of a premises licence for Mesopotamia, 17 York Place, Brighton, BN1 4GU.
- 4.2 Mr Savill, Barrister representing Sussex Police, Ms Irving and Inspector Harris attended to speak on behalf of the applicant, Sussex Police. Ms MacBeth and Ms Player from Trading Standards attended to speak in favour of the review application. Mr Sengoz, the Premises Licence Holder, Mr Gok, the Designated Premises Supervisor, and Mr Dadds, Solicitor representing Mr Sengoz attended to speak against the review application. Ms Jezeril attended to act as an interpreter for Mr Sengoz.
- 4.3 The Senior Environmental Health Officer began by summarising the report and stating that Sussex Police had requested a review of the licence on the ground of Protecting Children from Harm and Prevention of Crime and Disorder. Test purchase operations had been carried out by Trading Standards between November 2008 and March 2009, and had resulted in three failed test purchase operations. The police also cited a lack of engagement with responsible authorities by the licence holder as a particular problem at this premises. As a result Sussex Police were now seeking for the licence to be suspended for three months and for additional conditions to be attached to the licence.

The Senior Environmental Health Officer informed the Panel that the options open to them were to modify the conditions of the licence; to exclude a licensable activity; to remove the Designated Premises Supervisor; to suspend the licence for a period not exceeding three months; or to revoke the licence.

- 4.4 The Chairman asked if there were any questions about the statement of the Senior Environmental Health Officer and there were none.
- 4.5 Mr Savill began his representation on behalf of Sussex Police and stated that the conduct of the premises gave rise to serious concerns. Guidance indicated that revocation could be appropriate in cases where problems were sufficiently serious. The complete lack of engagement by the Premises Licence Holder (PLH) with the Police, and the three failed test purchases, where both alcohol and cigarettes were sold to minors, had resulted in Sussex Police determining that revocation was appropriate in this instance.

Mr Savill noted that during the first failed test purchase, when questioned the member of staff who made the sale believed the test purchaser to be eighteen years old, however as the premises was operating a Challenge 21 policy the member of staff should have requested to see ID in this instance. The member of staff stated he had worked at the premises for eighteen months and had received training on underage sales once by Trading Standards.

Following this incident, the Designated Premises Supervisor (DPS) was invited to attend a meeting with Trading Standards and Sussex Police, but the PLH attended with his daughter instead. At the meeting the PLH proposed to employ his daughter as a new DPS, although this had not taken place. This initial meeting was aborted early due to

language difficulties, and a letter was sent to the DPS and the PLH highlighting their responsibilities with regard to underage sales of alcohol to minors, but this letter was unanswered. Another test purchase was failed and the member of staff, when challenged, stated that he was afraid to challenge customers for ID because of fear of reprisals. A further letter was written to the daughter of the PLH, who was understood to speak English, but this was also unanswered, and intelligence was received that the premises was continuing to sell alcohol to minors. A final test purchase was conducted and failed on 30 March 2009.

Mr Savill stated that this was a difficult location, with several longstanding problems of alcohol related criminal behaviour in the area. The sequence of events revealed chaotic management, a lack of understanding of the premises licence conditions relating to the premises, and a lack of understanding of the laws relating to licensed premises. The lack of engagement with the Police remained a significant worry and further evidence had been received on 6 May 2009 to suggest there were ongoing problems. As such, the Police believed that revocation of the licence was necessary and appropriate.

- 4.6 The Chairman asked if there were any questions about Mr Savill's statement from the interested parties, and Councillor Theobald asked how the Police were aware that there were ongoing problems for the premises. Inspector Harris replied that there were general problems in the London Road area related to alcohol. The London Road LAT had listed as their top issue to tackle street drinking and anti-social behaviour and the community felt the Police were not doing enough to combat anti-social behaviour in their area. Inspector Harris was confident that this premises was contributing to these problems. Mr Savill added that the premises had been constantly monitored over the past months and evidence gathered to suggest continual problems.
- 4.7 The Chairman asked how the anti-social behaviour could be attributed to this premises in particular. Inspector Harris replied that the location was very challenging and needed strong management to ensure the licensing objectives were being upheld. Ms MacBeth added that specific intelligence had been received on this premises.
- 4.8 Mr Dadds, on behalf of the PLH, asked where the incident logs for this monitoring were kept. Inspector Harris replied that the premises was not constantly watched as the Police did not have the resources to do this, but evidence logs had been gathered to support the view that there were ongoing problems.
- 4.9 Mr Dadds asked if any "Innkeeper" reports were available on this premises, and why they were not presented as evidence. Inspector Harris stated that there were Innkeeper reports available, but they had not been included in the evidence as this would make the review application very large, and was not deemed appropriate. She stated that the evidence had been referred to in Inspector Leach's statement, which was included in the review application [for copy see minute book].
- 4.10 Mr Dadds asked if anyone had been prosecuted regarding street drinking in the area, and if so was there any connection to the establishment. Inspector Harris responded that she was unaware of any prosecutions relating to this or the establishment.

- 4.11 Mr Dadds asked if the Police had ever had any cause to seize CCTV footage at the premises and Inspector Harris responded that she did not know if this had happened in the past.
- 4.12 Mr Dadds asked Inspector Harris if she was aware that there were between 20 and 24 other licensed establishments in the immediate vicinity of premises, and that a rehabilitation centre was located close by. Inspector Harris replied that she was not specifically aware of the number of licensed establishments in that area, and noted that the rehabilitation centre was at 11 York Place.
- 4.13 Mr Dadds asked whether the interviews conducted with staff members from the premises at the Police Station were privileged documents. Inspector Harris responded that they were not conducted under caution and therefore not considered evidentiary.
- 4.14 Mr Dadds asked why the PLH had not been summonsed for underage sales of alcohol and Inspector Harris stated that the issue had been dealt with by fixed penalty notice.
- 4.15 Mr Dadds asked if it would be useful for the PLH to bring an interpreter to the Police Station if he was interviewed in the future, and Inspector Harris agreed that it would.
- 4.16 Mr Dadds asked if a Challenge 25 policy would help to reduce the risk of underage sales at the premises. Inspector Harris stated that she felt that it would, and that she was not aware of a failure from premises operating this condition.
- 4.17 Ms MacBeth, on behalf of Trading Standards began her representation and stated that three out of four recently conducted test purchase operations at the premises had failed. The member of staff who had failed the test purchase operation in February 2009 was a Personal Licence Holder and in the other two instances, the members of staff had received recent training. Trading Standards believed that these failures had resulted because of a lack of managerial control. At the time of the failures, the DPS was living in London and had no 'hands-on' involvement with the premises, and it was understood that the new DPS would be in the same situation, with his home address listed as Enfield.
- It was recognised that the PLH lived above the premises, but Ms MacBeth stated that English was not the first language of the PLH and it was understood that he had difficulty understanding advice given to him in English.
- Since the review application had been submitted, Trading Standards had continued to receive intelligence from members of the community that the premises was selling alcohol to underage children. Due to this, the failure of the DPS to be involved fully with the premises, the failure to engage with responsible authorities and difficulties with the English language, Trading Standards were fully supporting the application to revoke the premises licence.
- 4.18 The Chairman asked if there were any questions from interested parties about Ms MacBeth's representation.
- 4.19 Councillor Older asked if Trading Standards had ever met with the Premises Licence Holder, and Ms MacBeth stated they had not.

- 4.20 Councillor Older asked if any training had been organised with Trading Standards following the failed test purchases, and Ms MacBeth confirmed that no training had been organised, and they had no contact with either the DPS or the PLH.
- 4.21 Mr Dadds asked if the intelligence gathered by Trading Standards about the premises had been maintained. Ms MacBeth confirmed that all intelligence was logged on the Uniform database.
- 4.22 Mr Dadds asked why this intelligence had not been submitted as evidence to the Panel and Ms MacBeth stated that it had been referred to in witness statements, which was felt to be satisfactory for the purposes of the panel.
- 4.23 Mr Dadds asked if Trading Standards would have more confidence in the premises if the DPS was present every day to manage the premises. Ms MacBeth stated that Trading Standards was concerned that day to day management was not currently taking place at all at the premises.
- 4.24 Mr Dadds asked if training in Turkish had been offered, and Ms MacBeth confirmed that it had.
- 4.25 Mr Dadds asked if letters from Trading Standards had been sent to the PLH in Turkish, and Ms MacBeth stated that they had not.
- 4.26 Mr Dadds asked what steps had been taken to graduate enforcement at this premises. Ms MacBeth stated that letters had been sent originally, and then meetings set up to discuss the situation, and finally the review application.
- 4.27 Mr Dadds asked Ms MacBeth to confirm that this process had not taken place in Turkish and Ms MacBeth confirmed that it had not, but they had not had any contact with the DPS of the premises either, who could speak and understand English.
- 4.28 Mr Dadds asked if a Challenge 25 policy would help alleviate concerns about the premises. Ms Macbeth stated that this would not of itself prevent underage sales of alcohol, and stronger management would be needed at the premises to enforce the condition.
- 4.29 Mr Dadds asked if the failures could simply be down to the mistakes of the individuals concerned, and asked why the PLH should be blamed for this. Ms MacBeth stated that three failures indicated a deeper problem at the premises than individual mistakes and felt it was down to lack of management.
- 4.30 Mr Savill, on behalf of Sussex Police, noted that letters had been sent to the PLH in Turkish and asked Ms MacBeth what these were for.

Mr Dadds asked the Chairman if the Police were permitted to asked questions about another responsible authority's representation.

The Chairman referred to the 'Procedure for Licensing Act 2003 Sub-Committee – The Licensing Panel Section 167 (9) Review of Premises' which states that "...all other

parties may ask questions if given permission to do so by the panel...". The Chairman confirmed the Police were given permission to ask questions of Trading Standards.

Mr Dadds stated that his client was receiving unequal treatment in this regard, due to the increased influence on the Panel members from the responsible authorities. The Chairman stated that the Panel Members were not influenced unduly by any party present, and confirmed that this protocol was followed for every Review Hearing. The Council had done everything possible to ensure that the PLH understood the process of the meeting so that he was fairly represented, and had a chance to rebut the case against him. Mr Dadds confirmed this was the case.

Ms MacBeth responded to Mr Savill's question and stated that the letters written in Turkish had been sent by the Licensing Authority and not by Trading Standards.

- 4.31 Mr Dadds began his representation on behalf of the PLH and stated that issues at the premises were being confused with the general problems in the area. Arguments to revoke a premises licence must be relevant to the premises in question and must have evidence to prove this. General crime and disorder complaints had to be tied specifically to a premises before being used as evidence, and as there were so many licensed premises in this area, general arguments of problems on London Road were not specific and could not be considered relevant.

Mr Dadds agreed that the three failed test purchases were not in dispute, but noted that birth certificates of the test purchasers had not been provided as evidence. He stated it was not the case that the PLH did not understand the Licensing Act or his responsibilities in relation to it, as he had passed his Personal Licence Holder's test in November 2008, which was evidence of his understanding.

The PLH had also arranged training for staff members, provided by Trading Standards, to ensure they understood their personal responsibilities and ensured the message was put in place at the premises. Mr Dadds stated that the PLH could not be considered responsible for the acts of other people and had taken the necessary steps to ensure due diligence in terms of his responsibilities. He accepted the seriousness of the failed test purchases, but in this instance had given members of staff the appropriate training and had ensured that the messages were clearly reinforced.

Mr Dadds stated that the seller on two of the occasions had received training previously from the Trading Standards and he had very clearly stated that he understood the procedures after completing the training. The sales were made despite this training, and the Challenge 21 policy that had been put in place by the PLH to remedy this. The seller was dismissed two weeks after the second failed test purchase.

Mr Dadds stated that his client was surprised and disappointed by the failed test purchases as from his point of view he had provided staff with ample training and advice regarding sales of alcohol to minors. However, as a result of these failures, the PLH had taken the extra step of creating training manuals for each member of staff, which also sets out instructions on how to deal with underage sales. Mr Dadds went on to propose the following conditions to ensure that the four licensing objectives were upheld:

- Introduction of a Challenge 25 policy;

- Training manuals given to all staff on induction, and refresher training organised after six months;
- A refusals register to be maintained and reviewed weekly by the DPS;
- Any DPS must speak English to an acceptable standard;
- A Personal Licensing Holder to be present at all times during the sale of alcohol;
- A person must be present at the premises who can speak English at all times during the sale of alcohol.

The conditions were intended to ensure there were no further communication problems at the premises and Mr Dadds confirmed that his client was aware of the need to instruct an interpreter when dealing with responsible authorities in the future. However, Mr Dadds did not feel the previous breakdown in communication should be a reason for revocation of the licence and the objective of the panel should not be punishment, but about ensuring the licensing objectives were upheld. He also noted that suspension of a licence must not be disproportionately onerous in financial terms to the business.

The PLH had been proactive when problems occurred at the premises and Mr Dadds did not accept there had been a failure to engage with the responsible authorities. Lastly, Mr Dadds felt there had been a lack of evidence present at the meeting and any intelligence that had been relied upon should be available to all parties for inspection. The day to day management of the premises had changed and steps taken to ensure the licensing objectives would be upheld, and because of this, Mr Dadds did not feel revocation was necessary or proportionate.

- 4.32 The Chairman asked if there were any questions about Mr Dadds' representation, and asked who the previous DPS was. Mr Dadds replied that although the previous DPS had worked shifts at the premises on a regular basis, it was felt his conduct was not acceptable and he had been dismissed.
- 4.33 The Chairman asked if the new DPS would be spending a significant amount of time at the premises and whether he had any experience and Mr Dadds stated that he was completely aware of the situation and would be in attendance five days a week. Mr Gok, the new DPS, replied that he had previously worked at other off-licence establishments and was very aware of the need to rectify the problems at this establishment.
- 4.34 The Chairman asked how the PLH challenged customers for ID and Mr Dadds confirmed that he was able to do this in English.
- 4.35 The Chairman asked what action the PLH had taken after the incidents to ensure matters were put right. Mr Dadds stated that mistakes could occur in even the most successfully run operations and the PLH had ensured that current employees would be fired if they were caught serving alcohol to underage people. He was also assisted by his daughter, who had passed her Personal Licence training in 2008. Mr Dadds confirmed that excellent training was arranged for staff after the incidents and the Challenge 25 policy introduced and enforced.
- 4.36 Councillor Older asked who would be responsible for the premises when the DPS was not available. Mr Dadds stated that the PLH was available when the DPS was not, but that the DPS was mainly a point of contact for authorities rather than responsible for day to day management of the premises.

- 4.37 Councillor Older asked if high strength alcohol would be served at the premises. Mr Dadds stated that his client had agreed to put any high strength larger and spirits behind the counter, which would help staff to realise they were selling a different kind of alcohol and ensure checking of IDs. This would also help to alleviate the problem of proxy sales.
- 4.38 Councillor Older stated she was worried that staff at the establishment would be familiar with street drinkers and serve them alcohol because they were not confident enough to ask for ID. Mr Dadds confirmed that street drinkers did congregate near to the premises but he asserted that the PLH did not allow sales to street drinkers.
- 4.39 Councillor Mrs Theobald asked when the DPS would be at the establishment and Mr Dadds replied that it would change depending on the shift, but there was a suggested condition for a Personal Licence Holder to be present at all times during the sale of alcohol which the PLH was happy to agree to.
- 4.40 Councillor Mrs Theobald noticed that there had only been five entries into the refusals book for the period January to April and asked if this was truly representative for the area. Mr Dadds agreed that there would normally be more entries for this area, which was why a condition had been suggested for the DPS to monitor and sign the refusals book weekly to ensure it was being used correctly.
- 4.41 Mr Savill asked how the PLH knew Mr Gok, the new DPS. Mr Dadds did not feel this question was relevant to the application as the DPS had already been approved by the Police.
- 4.42 Mr Savill asked why the PLH had only agreed to the proposed conditions on the date of the Panel meeting and why an agreement could not be reached previously to this. Mr Dadds acknowledged that an agreement beforehand would have been helpful, but felt that his client was entitled to suggest conditions at any point in the process and should not be penalised for doing so. Mr Savill suggested that it demonstrated a lack of engagement from the PLH, but Mr Dadds stated that the PLH had engaged with the Police last year, although agreed that language had been a barrier to success.
- 4.43 Mr Savill asked why the PLH had not responded to the letters written to him in Turkish. Mr Dadds stated that he was unsure where the letters had been posted and that the PLH had not had sight of these letters.
- 4.44 Mr Savill asked why an interpreter had only been hired in May 2009 when the review application had been submitted at the end of October 2008. Mr Dadds declined to answer the question as he did not feel it was relevant to the application.
- 4.45 Mr Savill asked what steps the PLH had taken to familiarise himself with Brighton & Hove Licensing Policy. Mr Dadds confirmed that he had attended training organised by Trading Standards and also considered the policy when studying for his Personal Licence Holder certificate in October 2008.
- 4.46 Ms Player asked who had drawn up the training manuals for staff and Mr Dadds confirmed that he had, in conjunction with the Licensing Agent hired by the PLH. Ms Player asked if it was a generic document, not tailored to the establishment, and Mr

Dadds replied that elements had been tailored and that staff members were required to sign to state they understood the contents.

- 4.47 Ms Player asked who was responsible for checking and establishing the training requirements for staff. Mr Dadds stated that this would be the responsibility of the DPS.
- 4.48 Ms Player was concerned that the training so far given was not specifically related to underage sales of alcohol, which was a particular problem at this establishment. Mr Dadds stated that the PLH and his daughter had been on Personal Licence training and other staff had received training equivalent to BII standards, which had been conducted in Turkish and English.
- 4.49 Ms Player stated that she was concerned the PLH did not have enough English to successfully challenge customers for ID, but Mr Dadds denied this.
- 4.50 The Senior Environmental Health Officer began his final statement and highlighted the options available to the Panel including modification of the licence; exclusion of a licensable activity; removal of the DPS; suspension of the licence for a period not longer than three months; or revocation of the licence. He referred to the recent DCMS guidance 'Problem Premises on Probation', which contains a list of suggested tough conditions for premises where problems persisted. He stated that the guidance was clear when referring to problem premises and revocation could be used in the first instances if the situation was sufficiently serious. The Senior Environmental Health Officer added that the Licensing Panel should seek to find out the cause of the problems and determine what action to take in response to this. The action taken should be balanced, fair and proportionate.
- 4.51 Mr Savill began his final representation and stated that this was a very serious case, which was not based on generalities, but on the fact of three failed test purchases. There were already reported troubles with alcohol-related problems in this area and the Police expected establishments to take reasonable precautions to ensure they were not contributing to these problems.

Mr Savill stated that the licensing objectives were not being upheld, and although the location of the premises was challenging, this was not a reason to disregard the objectives. There had been continued evidence of problems with sales of alcohol to underage people at the premises and Trading Standards rated the establishment as a high risk. Sussex Police had made numerous attempts to engage with the PLH and to work with the management, but this had not transpired.

The Police had no confidence in the management of the establishment and felt the proposed conditions from the PLH reflected the mismanagement of the premises. Therefore the Police asked the Panel to consider revoking the premises Licence.

- 4.52 Trading Standards had no further representation to make but agreed with the representations from Sussex Police.
- 4.53 Mr Dadds began his final representation and stated that the Police had a duty to provide evidence if relied upon in an application as the PLH was entitled to see it and rebut it where necessary. The PLH did not accept that many of the statements from the Police

were true and felt the establishment was well run. The seriousness of the three failed test purchases was recognised but there were outstanding issues over the ages of the test purchasers. In each case however steps had been taken to rectify the problems, which were appropriate and in accordance with Licensing policy. A Licensing Agent had been instructed, the DPS had been replaced, English speakers were placed in the premises, appropriate signage had been hung and extra conditions considered, which was evidence that the PLH was a responsible manager.

Mr Dadds agreed that there were communication problems with the responsible authorities, and the PLH was seeking to remedy this problem. The evidence suggested that the PLH had acted responsibly throughout, but could not ultimately be responsible for the actions of individuals, who had received the appropriate amount of training.

Mr Dadds did not feel the communication problems at the premises were a good enough reason to revoke the licence and asked for extra conditions as proposed to be considered, to ensure the licensing objectives were upheld.

4.54 The panel have decided to take the following action in respect of the review:

The panel feel that there had been a serious breakdown in the management of these premises. The previous DPS, who did not fulfil his duties, and the Premises Licence Holder, who did not manage this premises to ensure that the licensing objectives were met, were both inadequate.

The panel also feel very concerned and are mindful about the area in which the premises are situated, especially in regard to alcohol related crime and disorder. As such the panel feels that all premises in this area need to be extra vigilant in the monitoring of alcohol sales.

Further, the panel feel that to uphold the licensing objectives of Protection of Children from Harm and Prevention of Crime and Disorder, and in the interests of the wider community, that this licence should be suspended for three months to allow the management and the new DPS time to engage with the local Licensing Authority, Trading Standards, and Sussex Police for advice on additional training to the satisfaction of the Licensing Authority. We are also placing the following conditions on the premises licence:

7. Digital CCTV and appropriate recording equipment to be installed, operated and maintained throughout the premises internally to cover all public areas with sufficient numbers of cameras as agreed with Sussex Police. CCTV footage will be stored for a minimum of 28 days, and the management will give full and immediate cooperation and technical assistance to the Police in the event that CCTV footage is requested for the prevention and detection of suspected or alleged crime. The CCTV images will record and display dates and times, and these times will be checked regularly to ensure their accuracy and will be changed when British Summer Time starts and ends.
8. The DPS or a personal licence holder will be on the premises at all times that alcohol is available for sale.

9. The premises will operate a Challenge 25 policy whereby any person attempting to buy alcohol who appears to be under 25 will be asked for photographic ID to prove their age. The only forms of ID that will be accepted are passports, driving licences with a photograph, or Portman Group, Citizen Card or Validate proof of age cards bearing the PASS mark hologram. The list of approved forms of ID may be amended or revised with the prior written agreement of Sussex Police and the Licensing Authority without the need to amend the licence or conditions attaching to it.
10. Suitable and sufficient signage advertising the Challenge 25 policy will be displayed in prominent locations in the premises.
11. All staff members engaged, or to be engaged, in the selling of alcohol on the premises shall receive the following training in age-restricted sales:
 - Induction training which must be completed, and fully documented, prior to the sale of alcohol by the staff member, and refresher training thereafter at intervals of no less than 8 weeks.
 - All age-restricted sales training undertaken by staff members shall be fully documented and recorded. All training records shall be made available to Sussex Police and Brighton & Hove Trading Standards Service upon request.
12. The premises shall at all times maintain and operate two age-restricted sales refusals books, which shall be reviewed by the DPS at intervals of no less than four weeks and feedback given to staff as relevant. These refusals books shall be available upon request to Police staff, Local Authority staff and Trading Standards.
13. At all times during the sale of alcohol there shall be a staff member on site who is able to speak and understand English to an appropriate standard.

The meeting concluded at 7.15pm

Signed

Chairman

Dated this

day of