

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

**10.00am 3 DECEMBER 2009**

**COUNCIL CHAMBER, BRIGHTON TOWN HALL**

**MINUTES**

**Present:** Councillor Cobb (Chairman); Phillips and West

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

**PART ONE**

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

97.1 Councillor Mrs Cobb was appointed Chairman for the meeting.

**98. PROCEDURAL BUSINESS**

**98a Declarations of Substitutes**

98.1 There were none.

**98b Declarations of Interests**

98.2 There were none.

**98c Exclusion of the Press and Public**

98.3 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 100(1) of the Act).

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

**99. SKY FOOD AND WINE, 17 YORK PLACE, BRIGHTON**

- 99.1 The Panel considered a report regarding an application for a new premises licence under the Licensing Act 2003 for Sky Food and Wine, 17 York Place, Brighton (for a copy see minute book).
- 99.2 Mr Altun, Premises Licence Holder (PLH) and Mr Cimen, agent to the PLH, attended the hearing to make representations in favour of the application. Inspector Harris from Sussex Police, Mr Savil, Solicitor for Sussex Police and Ms Player from Trading Standards attended the hearing to make representations against the application.
- 99.3 The Senior Environmental Health Officer, Mr Whitelegg, began by summarising the application and noted that there was already a licence on the premises under the name of Mesopotamia, which had recently been reviewed at a panel hearing and was suspended for three months. The conditions attached to that licence were part of an addendum to the panel papers. Two representations had been received from Sussex Police and Trading Standards relating to Protection of Children from Harm and Prevention of Crime and Disorder. Mr Whitelegg referred to the Home Office Guidance: Problem Premises on Probation and stated that the panel needed to consider why a new premises licence was being applied for when one already existed at the premises.
- 99.4 The Chairman asked if there were any questions of Mr Whitelegg's statement and there were none.
- 99.5 Mr Savil began his representation on behalf of Sussex Police and stated that a review hearing had been held on 1 June for Mesopotamia where the licence had been suspended. An appeal was submitted and on 19 June the licence had been transferred to Mr Altun. On 30 October the appeal was dismissed by the Magistrate's Court and subsequently a new premises licence was applied for by Mr Altun. Whilst there was nothing in the law to prevent this application, Mr Savil did not believe this was the proper use of the Licensing Act 2003 and felt the application was merely to circumvent the current suspension on the premises.

Mr Savil stated that the original suspension had been proportionate and fair, acted as an important deterrent and helped to break the link between the premises and the availability of alcohol to under-aged people and street drinkers. The police were not confident that this break had been achieved and believed there were ongoing problems with the premises even after the review hearing. Notably, a condition had been breached regarding the display of high strength alcohol, which was still being advertised in a prominent position in the shop. Further problems included the Designated Premises Supervisor (DPS) not checking the refusals book, and the police were concerned about the staff selling alcohol, with evidence that one member of staff was telling street drinkers to hide the alcohol they purchased from the Police.

Mr Savil added that the new licence application was confusing and contradictory and noted several errors in the documents. He believed this was all evidence that the premises was still not being managed effectively and the police felt that further work

needed to be done before the premises could confidently sell alcohol within the law again.

- 99.6 Ms Player began her representation and stated that she agreed entirely with the police representation and felt that it was important that the under the previous management there had been a notable failure of engagement with the responsible authorities, and this trend seemed not to have changed under the new management of Mr Altun. She was concerned that the same culture and practices at the premises were continuing and believed that the premises management and staff now needed to work closely with the police and Trading Standards to ensure they upheld the licensing objectives.
- 99.7 The Chairman asked if there were any questions of the representations from Sussex Police and Trading Standards and Councillor West asked why the police objected to the prominent display of high strength alcohol at the premises. Inspector Harris replied that in August a licensing visit had been conducted where it was found that alcohol between 9-10 per cent was being sold to alcohol dependant people. There were general problems in the area relating to street drinkers and anti-social behaviour and Inspector Harris believed this was encouraging criminal behaviour.
- She added that the police would like to see the shop stop promoting this type of alcohol as prominently, as this was the biggest problem for alcohol dependent people. It was an offence to sell alcohol to a drunken person, but quite often it was difficult to identify if an alcohol dependent person was intoxicated. Inspector Harris added that the previous licence holder's daughter was still working at the shop and had advised street drinkers to hide their alcohol if the police came, and whilst a condition had been added on the previous licence review to keep high strength alcohol behind the counter, it was found to be prominently displayed in the middle of the shop.
- 99.8 Mr Savil added that this activity and the breaches in the licence indicated the level of responsibility of the current PLH, and the police had very little confidence that the licensing objectives would be upheld. Ms Player added that it was well known that street drinkers were cooperating with children to supply them with alcohol and felt the link with this shop had not been broken.
- 99.9 Councillor Phillips asked if it was outside the responsibilities of an individual staff member to be able to identify and refuse sale to someone who was drunk and Inspector Harris replied that it was each person's individual responsibility in the shop to ensure that they did not sell alcohol to drunken people. The police would prosecute on an individual basis if it were proved the seller had sold alcohol to a drunken person.
- 99.10 Mr Cimen noted that street drinkers were providing alcohol to children and asked if there was any specific evidence tying this shop to this practice. Ms Player said there was not, but there were existing problems in the area. Inspector Harris agreed that there was no evidence relating to this premises and the currently PLH.
- 99.11 Mr Cimen began his representation and stated that the current PLH had held the licence since 19 June 2009, and had been operating the premises until the dismissal

of the appeal on 30 October 2009. The business had been sold to Mr Altun because the previous PLH understood that he could not manage the business properly and Mr Altun had taken on a premises with a history of problems. However, there had been no problems between June and October 2009 and Mr Altun had been a responsible licence holder. He kept all details of refusals made at the premises, details of staff training and ensured the premises was run according to its licence. When the premises reopened, Mr Altun would be responsible for selling alcohol and would be a Personal Licence Holder.

Mr Cimen believed the objections expressed related to the previous premises management and added that the shop had been visited several times since Mr Altun had taken over and no problems had been found. He stated that CCTV had been put in the premises, a Challenge 25 policy introduced and Mr Altun ensured that he was regularly on the premises. A new application had been applied for to create a clean break with the old style of management and if it was not granted it would act as a punishment to Mr Altun, who was not responsible for any of the previous transgressions.

Mr Cimen added that Mr Altun was happy to accept any conditions the panel felt necessary to impose on the licence and was happy for the Police and Trading Standards to visit the premises at any time. He stated that high strength alcohol would be kept behind the counter from now on and the premises was happy to use logo bags for customers to take alcohol away in, so that the establishment could be identified if there were any problems. He did not think there was a problem with street drinkers buying alcohol at the premises, and noted that all of the test purchases were related to underage sales of alcohol. Mr Cimen offered a condition to only sell alcohol over 7 per cent ABV after 22:00 hours.

He recognised there were some mistakes on the application papers, but also believed the police were disputing some conditions that were reasonable and appropriate, such as checking the toilets regularly for drugs use. He finally added that the panel should consider the history of management of the premises since Mr Altun had taken over the licence, which was without fault, before making their decision.

- 99.12 The Chairman asked if there were any questions of Mr Cimen's representation and Councillor West asked why Mr Altun was applying for a new licence. Mr Cimen replied that Mr Altun was currently suffering from a suspension over which he had no involvement and felt he was being punished unfairly. He would like to start afresh at the premises with a new licence.
- 99.13 The Chairman asked why Mr Altun had appealed the review decision. Mr Cimen replied that he had appealed because the licence had transferred to a new owner during this time and he believed the decision was not relevant to the way he would run the business.
- 99.14 The Chairman asked how high strength alcohol would be dealt with at the premises and Mr Cimen replied that it would be stored behind the counter and only sold after 22:00 hours. The Chairman asked if Mr Altun was prepared to not sell high strength alcohol over 7 per cent ABV. Mr Cimen replied that Mr Altun was not responsible for

the mistakes of the previous management and this would punish him unfairly. He offered instead to employ two Personal Licence Holders and to ensure one was at the shop at all times.

- 99.15 The Chairman asked how many members of the public used the toilets at the premises. Mr Cimen replied that they were not public toilets, but the offered condition relating to toilets was to ensure they were kept in good order. He noted that a change of layout and refurbishment was planned for the store.
- 99.16 The Chairman asked why staff were telling customers to hide alcohol under their coats. Mr Cimen replied that the staff member who had done this was no longer working at the premises, and none of the staff under the previous management would be working there. He added that staff would be regularly trained to ensure the upheld the licensing objectives.
- 99.17 Councillor West stated that there was evidence that the premises was not well run since Mr Altun had taken over. He added that there had been no attempt to engage with the police and Trading Standards and asked why this was. Mr Cimen replied that Mr Altun had fully taken over operation of the premises in August and between then and October when the licence was suspended there had been no problems. He added that any conditions the panel felt were appropriate to add to the licence would be acceptable.
- 99.18 The Chairman asked when evidence Trading Standards had of illegal sales still being made at the premises. Ms Player replied that there had been complaints from members of the public that the premises was still selling alcohol to children and to street drinkers. Mr Cimen asked if test purchases had been failed recently at the shop and Ms Player confirmed they had not.
- 99.19 Mr Savil asked whether Mr Altun knew the premises was under review when he purchased the shop. Mr Cimen replied that he did know as Mr Altun had agreed to purchase the shop before the review process was initiated.
- 99.20 Mr Savil noted that Mr Altun had take over day-to-day management of the premises in August, but the licence had been transferred to him in June. He asked who was responsible for the management of the premises during this period. Mr Cimen replied that the DPS was Mr Sekengok during this time, but Mr Altun had visited the premises regularly.
- 99.21 Mr Savil asked if Mr Sekengok was still the DPS and Mr Cimen confirmed that he was, although on the new licence application Mr Altun would be the DPS.
- 99.22 Mr Savil asked why the police had been introduced to Mr Sengoz as the manager of the premises in August. Mr Cimen replied that he had not been the manager at this time. He recognised that Mr Sengoz had still been attending the premises to finalise the last details of the business transaction, but confirmed he was not involved with and not working at the shop.
- 99.23 Mr Savil asked if Mr Sengoz's daughter was working in the shop during this period and Mr Cimen confirmed that she was. He added that there was a need to some

continuity whilst the transaction was being completed, although Mr Sengoz's daughter no longer worked there.

- 99.24 Mr Savil stated that on 17 August Mr Sengoz's daughter had told Trading Standards Officers that Mr Sengoz was not available because he was at the cash and carry. Mr Savil believed this indicated that Mr Sengoz was still working for the shop on this date and asked Mr Cimen to explain. He replied that there may have been confusion among staff members during this time given Mr Sengoz's previous history with the premises, but reiterated that he was not working at the shop.
- 99.25 Mr Savil asked if Mr Altun knew who was managing his shop during this period and Mr Cimen replied that the DPS Mr Sekengok was running the premises.
- 99.26 Mr Savil asked why Mr Cimen was offering to train the staff every three months when the original licence condition was for training every eight weeks. Mr Cimen replied that the DPS would train the staff every eight weeks, but additional training would be organised every three months with a licence training company to ensure staff were fully trained.
- 99.27 Mr Savil asked if the plan submitted with the licence application was redundant if changes were being proposed for the premises. Mr Cimen replied that if the licence was granted they would submit a minor variation to the plans if necessary.
- 99.28 Mr Savil asked if the alterations were already underway and Mr Cimen replied that they would only begin if the licence were granted.
- 99.29 Mr Savil asked if there were any public toilets in the premises and Mr Cimen replied that the staff toilets were available to members of the public on certain occasions. Mr Savil asked why it was sensible to check the toilets for drugs when they were not available to members of the public and Mr Cimen replied that the toilets needed to be checked anyway and Mr Altun was happy to ensure this was a condition.
- 99.30 Mr Savil asked if any thought had gone into the preparation of the licence application and Mr Cimen replied that the agents prepared licences for several different types of establishments and there had been some simple administration errors on this licence application. He added that Mr Altun was working very hard to ensure his premises ran effectively and was well managed.
- 99.31 Mr Savil stated there were discrepancies in the conditions offered to the panel through the application and asked which ones were to be considered. Mr Cimen replied the conditions on the operating schedule were the conditions offered, but added that Mr Altun was happy to accept any other conditions the panel felt were appropriate. Mr Savil asked if it was the applicant's responsibility to ensure the conditions were appropriate and enforceable and Mr Cimen agreed to this.
- 99.32 Ms Player asked when the legal ownership of the business transferred to Mr Altun. Mr Cimen replied that the process was still ongoing but would be completed in around one month.

- 99.33 Ms Player asked who currently owned the business and Mr Cimen replied that Mr Bektesh owned the leasehold on the building, which Mr Altun was seeking to purchase. Mr Altun was the owner of the business from 2 July 2009.
- 99.34 Ms Player asked why Mr Altun was legally responsible for the business from June but had no involvement with it until August. Mr Cimen replied that he had been responsible for the premises the whole time, but took over day-to-day management from August.
- 99.35 Ms Player asked when training for the staff took place. Mr Cimen replied that Mr Altun had achieved his Personal Licence certificate in July, but the rest of the staff were awaiting training when the business reopened.
- 99.36 Ms Player stated that a test purchase had taken place in October and although ID had been asked for, when none was available the seller had asked the customer's age instead. This indicated poor training. Mr Cimen replied that all staff would undergo training from a licensing agent once the business was reopened.
- 99.37 Ms Player asked what procedures would be put in place once the business was reopened. Mr Cimen replied that a training pack was available from Brighton & Hove City Council and a dual language training pack was available from the licensing agents that Mr Altun was using.
- 99.38 Ms Player asked what type of clients usually purchased the high strength alcohol in the shop. Mr Cimen realised that this was normally purchased by street drinkers but added that it was also bought by other types of customer.
- Mr Altun stated that he realised street drinkers and homeless people drank high strength alcohol, but added that the premises next door also sold high strength alcohol so they would purchase from them instead. He did not feel street drinkers were his problem and he did not sell them alcohol if they were drunk. He recognised the problems in the area but felt this was not his responsibility and that the police should be doing more to manage this. He stated that he could not refuse to sell alcohol to these people and could only help by trying to control the amount they purchased and drunk through his premises.
- 99.39 Mr Whitelegg began his final statement and stated that there were anomalies in the operating schedule. The suspension had been imposed in June 2009 as a result of serious offences at the premises and the applicant had stated that if the licence was granted he would operate during the suspension period. Therefore, it is clear that the purpose of this licence application was to circumvent this suspension. He added that if this was the case then it would appear that the licensing objectives would be undermined and the panel should consider refusing the application.
- 99.40 Mr Savil began his final representation and stated that this was a shambolic application with the only intention of getting around the first licence suspension. The police did not believe the application would uphold the licensing objectives and they were not confident in the management of the premises. He asked the panel to refuse the application.

- 99.41 Ms Player stated that she fully agreed with the Police representation and had no more to add.
- 99.42 Mr Cimen began his final representation and stated that Mr Altun was fully aware of the conditions on his licence and would uphold the licensing objectives. He kept records of street drinkers using his premises and these were available to the police, and noted that the licence could be reviewed if there were problems at the premises. Mr Altun was a new licence holder and wanted to start afresh, with a new licence, and he asked the panel to grant the application.

- 99.43 **RESOLVED** – That the Panel have decided to refuse the application.

The Panel believe that the application is an attempt to circumvent the current suspension of their existing licence. The applicant has not presented a convincing case or demonstrated in actions how they will uphold the licensing objectives.

**100. THE RED ROOMS, 8 QUEENS ROAD, BRIGHTON**

- 100.1 The Panel considered an application for variation of a premises licence under the Licensing Act 2003 for The Red Rooms, 8 Queens Road, Brighton, BN1 3WA (for a copy see minute book).
- 100.2 Mr Cavanagh and Ms Neath, local residents, and Ms Sharma, Environmental Protection Officer, attended the hearing to make representations against the application.
- 100.3 Mr Whitelegg began by summarising the application and stating that the variation was to extend regulated entertainment hours. Representations had been received from local residents and the Environmental Protection Department. Sussex Police had withdrawn their representation following agreement to conditions. Mr Whitelegg noted that the application was in the Cumulative Impact Area where new applications were normally refused unless the applicant could demonstrate that there would be no negative cumulative impact as a result of their application.
- 100.4 The Chairman asked if there were any questions of Mr Whitelegg's statement. Councillor West asked if all the police conditions had been agreed to and Mr Whitelegg confirmed this.
- 100.5 The Solicitor to the panel asked Mr Whitelegg to confirm that the applicants, who were not present at the hearing, had been notified of the hearing date in due time, and he confirmed this.
- 100.6 Ms Sharma began her representation and stated that the applicant had failed to demonstrate how public nuisance would be prevented by this application. She noted the premises was in the Cumulative Impact Area where applications were normally refused and she did not feel the applicant had adequately demonstrated that there would be no adverse impact on the area.

A number of noise complaints had been received about the premises and emergency calls to the police had been made regarding disorder and fights at the

premises. However, no statutory noise nuisance had been witnessed but the premises was still under investigation. To ensure there would be no negative impact on the area in terms of additional noise nuisance, Ms Sharma recommended a number of conditions to be attached to the licence.

- 100.7 Ms Neath began her representation and stated that there had been a fight at the premises after she had sent in her representation and she witnessed the owner chasing a customer up the street with a baseball bat. The music at the premises was very loud and continued usually until around midnight, and the sound reverberated up the walls to their flat.
- 100.8 Mr Cavanagh did not make an initial representation.
- 100.9 The Chairman asked if there were any questions of the representations and Councillor West asked how much the music disturbed Ms Neath and Mr Cavanagh. Mr Cavanagh replied that although the music was played in the basement, it travelled up a stairwell in the building to their flat and was very loud to the extent that the walls vibrated at times.
- 100.10 Councillor West asked if there was a noise problem from smokers standing outside the premises and Ms Neath replied that there was, but they were not the worst problem. She recognised she lived on a busy road and was used to some noise in the evenings, but felt that the music was excessively loud and constant.
- 100.11 Councillor West asked if there were more customers at the premises when the music was played loudly and Ms Neath replied she had not noticed a difference. She stated that if the applicants adhered to their current operating schedule she did not believe there would be a problem at the premises.
- 100.12 Councillor Phillips asked if Ms Neath felt that confining music to the basement would help to solve the problem and Ms Neath felt that if it was played through the limiter it would be acceptable in the basement. Ms Sharma raised concerns that the limiter was being circumvented on a regular basis and was not as effective as it might be.
- 100.13 The Chairman asked how many smokers were usually outside the premises and Ms Neath replied there were generally around four or five.
- 100.14 Mr Whitelegg began his final statement and stated that this premises was in the Cumulative Impact Area where applications were normally refused unless the applicant could demonstrate through their operating schedule how there would be no negative cumulative impact. He referred the panel to the Statement of Licensing Policy and added that if the application were approved, any conditions should be clear, enforceable and proportionate to the type and style of the application.
- 100.15 Ms Sharma began her final representation and stated that she did not support the variation. She felt that the current history of complaints at this premises made it difficult to prevent public nuisance occurring in this setting and she asked the panel to refuse the application.

- 100.16 Mr Cavanagh began his final representation and stated that when the applicant complied with their current licence there was not a problem at the premises. However, they were breaching their licence conditions and playing music much louder and much later at night. He felt that an effective limiter on the sound system would solve many of the problems.
- 100.17 The Solicitor to the panel clarified that if the panel refused the application they could not attach additional conditions to the licence. Mr Whitelegg added that if the panel were minded to grant they did not have to grant the full application.
- 100.18 **RESOLVED** – That the panel considered the relevant representations and submissions from the Responsible Authority and interested parties.

The Panel have decided to grant the variation of the Premises Licence with the following conditions as agreed with Sussex Police and amended by the Panel:

1. A minimum of two SIA registered door supervisors will operate from the premises on Friday and Saturday nights and on Christmas Eve, New Years Eve and Bank Holidays from 20:00 hours until close. Door Supervisors will not dual role as bar staff etc.
2. The premises will contract for the provision of a recognised mobile support unit which will provide SIA qualified Door Supervisor backup 24 hours a day.

[N.B.: inclusion of the above conditions will render existing condition Annex 3 (4) redundant].

3. Door Supervisors ancillary conditions:
  - a) Records shall be maintained at the premises containing the full name, date of birth and home address of ever Door Supervisor employed.
  - b) On initial employment of the door supervisor, authentic proof of identity shall be obtained in the form of a passport, driver's licence or a birth certificate.
  - c) The record shall include all dates and times when a door supervisor is employed.
  - d) If staff are employed through an agency, the name and address of the agency must be included in the entry referring to the person employed by the agency.
  - e) Any such record must be in a form approved by the licensing authority (in the event that no form is either issued or approved by the licensing authority, the management may draft their own form but this must contain all the information stipulated in this section).
  - f) The DPS (or in the absence of the DPS the person with delegated authority) will ensure door supervisors display their SIA badges at all times they are on duty.
4. Digital CCTV and appropriate recording equipment to be installed, operated and maintained throughout the premises externally and internally (including the basement) 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.

5. 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 card 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.
6. Suitable and sufficient signage advertising the "Challenge 25" policy will be displayed in prominent locations in the premises.
7. All staff members engaged, or to be engaged, in selling alcohol on the premises shall receive the following training in age-restricted sales:
  - i) 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.
  - ii) 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.
8. All persons under 18 years of age must be accompanied by an adult. No persons under 18 shall be allowed on the premises after 21:00 hours (other than children living on the premises or of the people working on the premises).

The conditions proposed by Environmental Protection shall be attached to the licence with the following amendments and omissions:

**Omit** – "Music will be confined to the basement".

9. Recorded, live and amplified music can only be played in, and must be confined to, the basement bar.

**Omit** – "Instructions will be issued to musicians, DJs etc, to keep noise levels lower after 23:00 and this will be enforced by the licensees.

**Omit** – The amplified sound equipment shall be governed by a sound limiting device set at a level approved by the licensing authority.

10. The amplified sound equipment used for regulated entertainment shall be governed by a sound limiting device set at a level approved by the licensing authority.

Further conditions to be added to the Licence as follows:

11. No more than 5 customers shall be permitted outside after 23:00 hours. The Door Supervisors shall be instructed to monitor and control these numbers, and the levels of noise when on duty. Staff to monitor at all other times.

12. Self closers to be fitted on all external doors and windows where deemed appropriate by Environmental Protection Officers.

The Panel believe that these conditions will uphold and promote the licensing objectives.

The meeting concluded at 2.10pm

Signed

Chairman

Dated this

day of