

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

**10.00am 11 JANUARY 2010**

**COMMITTEE ROOMS 2/3, BRIGHTON TOWN HALL**

**MINUTES**

**Present:** Councillor Lepper (Chair); Simson and West

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

**PART ONE**

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

111.1 Councillor Lepper was appointed Chairman for the meeting.

**112. PROCEDURAL BUSINESS**

**112a Declarations of Substitutes**

112.1 Councillor West declared that he was substituting for Councillor Kitcat.

**112b Declarations of Interests**

112.2 There were none.

**112c Exclusion of the Press and Public**

112.3 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, that 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).

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

**113. SAINSBURY'S, 123-129 PORTLAND ROAD, HOVE**

- 113.1 The Panel considered a report from the Assistant Director of Public Safety regarding a new application under the Licensing Act 2003 for Sainsbury's, 123-129 Portland Road, Hove (for copy see minute book).
- 113.2 Mr Bodkai, Solicitor representing Sainsbury's, Ms Roots, Area Manager for Sainsbury's and Mr Hawkey, Store Manager for Sainsbury's attended the hearing to make representations in favour of the application. Councillor Oxley, on behalf of the Portland Road Trader's Association, attended the hearing to speak against the application.
- 113.3 The Senior Environmental Health Officer, Mr Whitelegg, began by summarising the application. He stated that the application was for a new premises licence for the sale of alcohol every day from 06:00 hours to 23:00 hours. Representations had been received from local residents and community groups regarding the licensing objectives of Protection of Children from Harm, Prevention of Crime and Disorder and Prevention of Public Nuisance. The application was not sited in the Cumulative Impact Area or the Special Stress Area. Need was also referred to in the objections but Mr Whitelegg stated that this was not a licensing consideration.
- 113.4 The Chairman asked if there were any questions of Mr Whitelegg's statement and Councillor Oxley asked why evidence that he had submitted with his objection had not been included in the agenda papers. Mr Whitelegg confirmed that this evidence had been submitted and it had been an administrative error that it was not included. Councillor Oxley asked if the evidence could be distributed to the Panel Members. The Chairman stated that whilst it was unfortunate that the papers had not been included all parties would need to agree that they could be submitted to the panel at this point.

Mr Bodkai stated that he was concerned that papers might be submitted regarding police information when the police had not submitted a representation and were not in attendance at the meeting. The Solicitor to the Panel stated that the evidence had been submitted in good faith by the objector and should be given the benefit of being heard. However, she agreed that the evidence could not be proved as police evidence and they had not raised an objection against the application. She advised the Panel Members to give the evidence due weight in the circumstances. Mr Bodkai agreed for the papers to be circulated on this understanding.

- 113.5 Councillor Oxley began his representation and stated that he had worked closely with the Portland Road Traders Association over several months on the issue of alcohol related crime and anti-social behaviour in the area. He drew attention to the Local Action Team minutes submitted with his objection, and noted that this issue was an ongoing concern for the area and was regularly discussed. He referred to the evidence circulated to the panel and explained that he had obtained this data from the local PCSO. He was aware that licensing panel decisions were evidence based and agreed it was very difficult to gather evidence about a new application which was not in operation yet. However, Councillor Oxley felt that there was evidence to demonstrate that the area was already suffering from alcohol fuelled crime and anti-

social behaviour and had experienced significant problems in the past. He suggested that the granting of another alcohol licence in this area would negatively impact on the problems already being experienced and he felt that the panel needed to take this into consideration before granting another alcohol licence.

- 113.6 The Chairman asked if there were any questions and asked whether Councillor Oxley knew the times at which incidents largely took place and he replied that it was mostly around midnight.
- 113.7 The Chairman asked if Councillor Oxley felt that other licensed establishments in the area were selling alcohol irresponsibly. Councillor Oxley did not feel this was the case in his ward, but believed that the neighbouring ward had problems in this area.
- 113.8 Councillor Simson asked if there were any street drinkers in the area or in the nearby park. Councillor Oxley stated that Stoneham Park had serious issues with alcohol fuelled anti-social behaviour in the past and the police had worked hard to resolve this issue for local residents. He was concerned that the granting of this premises licence would instigate these problems again.
- 113.9 Councillor West asked if underage drinking was a particular problem for the area. Councillor Oxley replied that there were problems with anti-social drinking for all age groups.
- 113.10 Mr Bodkai had no questions of Councillor Oxley's representation.
- 113.11 Mr Bodkai began his representation and stated that a new Sainsbury's store would be opening at the end of February. They had submitted an alcohol licence application in consultation with the police, and he noted that there were no representations from responsible authorities against the application. Mr Bodkai referred to the representations against the application and noted that many of the concerns regarded planning matters and could not be taken into account as part of the licensing application. He added that this was a new licence and as such there was no evidence to suggest the store would operate an alcohol licence irresponsibly. The Brighton & Hove Statement of Licensing Policy recommended that premises should normally be allowed to sell alcohol for the times that they were open, unless there were very good reasons not to, and Mr Bodkai did not believe there were good reasons to refuse or limit this application.

He noted that there was no suggestion that this area was a hotspot for crime or youth disorder, and he did not believe that granting this licence would create problems. Sainsbury's were a responsible retailer and provided training for all staff in the sale of age restricted products, which was refreshed every six months. The store had agreed to a Challenge 21 policy, but would likely adopt the nationwide initiative of Challenge 25, they would operate refusal and challenge logs at the checkouts and CCTV had been installed to cover the area where alcohol was being stored.

Mr Bodkai recognised that the two greatest concerns around the sale of alcohol were underage drinking and proxy sales related to this. He believed that this was a difficult issue for the store to monitor and control, but stated that Sainsbury's would work with the police on this issue to ensure it was controlled as much as possible, and would

ban people from the store if requested to do so. He added that this was also the case for street drinkers who might be in the area. However, Mr Bodkai stated there was no reason to believe that this might be a problem for this area.

Further objections raised against the store related to need and Mr Bodkai reminded the Panel Members that need was not a licensing consideration. The store would not be open late, and although the opening hours were stated on the Schedule of Operation as 24 hours. This was not a licensable activity however, and had no bearing on the application.

Mr Bodkai stated that there was no evidence to suggest that this store would not uphold the licensing objectives. This was a standard application and no responsible authorities had objected to the licence. Sainsbury's wanted to provide a community facility for the area and was willing to work with the local traders association on any issues in the area.

- 113.13 The Chairman asked if there were any questions and asked what proportion of floor space would be given over to alcohol sales. Mr Bodkai replied that there was no requirement to mark on the plans where alcohol would be displayed, and could create problems for the store at a later date in terms of being required to vary the plans if they moved stock around. Ms Roots replied that around 10 per cent of the floor space would be taken up by alcohol sales.
- 113.14 The Chairman noted the store opening hours were listed as 24 hours on the Operating Schedule, and asked if the store were intending to vary the licence at a later date to allow 24 hour alcohol sales. Mr Bodkai replied there was no intention to do this at this time.
- 113.15 Councillor West asked why CCTV positions were not marked on the plans. Mr Bodkai replied that CCTV was conditioned on the Operating Schedule to ensure it covered the alcohol sales area, wherever in the store this might be. If CCTV points were listed on the plans and the alcohol was moved to a different location within the store, the store would have to apply for a variation to move the CCTV, which was impractical.
- 113.16 Councillor West asked if the applicants would accept a condition for a Challenge 25 policy to be operated at the store. Mr Bodkai replied that the applicants had already accepted a condition for Challenge 21 and believed this condition worked very well for the issues that were likely to occur in the store.
- 113.17 Councillor West asked for more details on the training provided to staff regarding age restricted sales. Mr Bodkai replied that there would always be Personal Licence Holders (PLHs) available in the store and the Manager and Duty Manager would be PLHs. He added that training would be given to all staff and then refresher training conducted every 6 months thereafter. Mr Bodkai also stated that training was not just about formal training but about raising and maintaining the profile of issues around age-restricted sales and providing a position culture for staff in this respect.
- 113.18 Councillor West asked if there were any extra security measures in place at the store to ensure there was no theft of alcohol. Mr Bodkai replied that the alcohol would be

placed in a very visible position opposite the checkouts and all spirits would be behind a counter.

- 113.19 Councillor West asked what the maximum Alcohol by Volume percentage that would be sold in the store was. Mr Bodkai replied that he was unsure of this, but added that if there were problems with particular types of alcohol, the store would be willing to cooperate with the police on this issue.
- 113.20 Councillor Simson noted that this was a standard application and that many of the conditions were standard. She asked if the store had considered the specific locality and whether the conditions had been tailored to the problems in the area. Mr Bodkai replied that the conditions had been agreed in negotiation with the police based on the area profile. He stated that Sainsbury's were committed to responsible retailing, but did not want conditions imposed on the licence that would be difficult or onerous to comply with.
- 113.21 Councillor Simson stated that the issue of pre-loading was currently prevalent in the city and asked what measures would be taken to ameliorate this problem at this store. Mr Bodkai replied that pre-loading of alcohol was primarily a social issue, but recognised that selling alcohol to someone who was drunk was against the law and Sainsbury's staff were trained in this.
- 113.22 Councillor Simson asked what kind of drinks promotions would be run at the store. Mr Bodkai replied that national drinks promotions would be run at the store but these would be promoted sensibly.
- 113.23 Councillor Simson asked if staff would be employed who were under the age of 18 years, and if they would be able to make alcohol sales. Mr Bodkai replied that the store would employ 16 and 17 year olds and if they sold alcohol they would need to get permission from an adult staff member first. Councillor Simson asked how this would be monitored and Mr Bodkai replied that it would be a fairly large store with a Manager always on duty to monitor the staff. He stated that there would never be an occasion where a 16 or 17 year old staff member would be left alone on the tills.
- 113.24 Councillor West stated he had heard that Sainsbury's were selling cans of lager for 50 pence per can and asked if it was the case that the store would be selling very cheap alcohol. Mr Hawkey agreed that this had been a promotion in some stores at one time, but this promotion had finished. He believed the cheapest promotion at this store on lager would be £1 per can.
- 113.25 Councillor Oxley asked if alcohol sales from 06:00 hours to 23:00 hours were standard for Sainsbury's stores. Mr Hawkey replied that it was in fact standards to sell alcohol from 06:00 hours to 00:00 hours.
- 113.26 Councillor Oxley asked if staff members were trained in how to identify inebriated customers and Ms Roots replied that the training was given in this area with suggestions of what to look out for.
- 113.27 Councillor Oxley asked how often sales were refused. Ms Roots explained that refusal of sale of age-restricted products took place regularly and the Area Managers

monitored the use of the refusal and challenge logs. Refusal of sales to inebriated persons was much less common however.

- 113.28 Mr Whitelegg began his final statement and stated that Home Office guidance on the Licensing Act 2003 stated that premises should be normally free to sell alcohol for the times they were open unless there were good reasons to restrict this; following a representation from the police for example. The decision of the panel should have regard to the representations received and if the panel was minded to approve the application, conditions should be tailored to the size, type and style of operation of the premises and must be clear and precise. If the panel were minded to refuse the application they must demonstrate how the application would undermine the licensing objectives and how conditions would be ineffective in ameliorating this.
- 113.29 Councillor Oxley began his final representation and stated that he believed the application had been brought on the grounds that because alcohol could be sold, it should be sold. He did not believe this should be the case and felt there was no further need for another premises selling alcohol in this area. There were already issues in the area around alcohol fuelled crime and disorder and he believed this application would add to the problems experienced. He asked the panel to refuse the application.
- 113.30 Mr Bodkai began his final representation and stated that alcohol sales were very important to a store of this size and type. Customers were used to convenience shopping and obtaining all their goods in one store and sales incidental to alcohol were also very important. He did not think there was evidence to suggest that the granting of the licence would create a problem in terms of crime and disorder and need was not a licensing consideration. The premises was not located in the Cumulative Impact Area and so its cumulative impact could not be considered and there had been no objection raised by Responsible Authorities. Mr Bodkai did not believe the evidence submitted by Councillor Oxley was verifiable or detailed enough, and asked the panel to disregard this. He finally stated that any conditions the panel felt necessary to attach to the licence should be necessary, concise and enforceable, and added that Sainsbury's would continue to work with Responsible Authorities to ensure the licensing objectives were upheld should the application be granted.

113.31 **RESOLVED –**

The panel have listened very carefully to the representations from local residents and the applicant and have decided to approve this application with the following additional condition:

Signage must be displayed at the checkouts to inform customers of any Challenge policy in operation at the store.

The Panel notes the training that will be provided to staff in the sale of age restricted items, but suggests that, given the concerns of anti-social behaviour related to alcohol in the area, the store might consider displaying prominent signs warning customers that the purchasing of alcohol for underage people is against the law, as this will be a deterrent for people considering proxy purchasing.

The Panel believe that this application will uphold the licensing objectives.

The meeting concluded at 11.55am

Signed

Chairman

Dated this

day of