

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

**9.30AM THURSDAY 1 FEBRUARY 2007**

**COMMITTEE ROOM 3 – BRIGHTON TOWN HALL**

**MINUTES**

Present: Councillors Lepper (Chair), Pidgeon and Simson

Also in attendance: Tim Nichols, Head of Environmental Health and Licensing, Rebecca Sidell, Panel Solicitor and Caroline De Marco, Committee Administrator.

**PART ONE**

**101. TO APPOINT A CHAIR FOR THE MEETING**

101.1 **RESOLVED** - Councillor Lepper was appointed Chair for this meeting.

**102. PROCEDURAL BUSINESS**

**102A Declarations of Substitutes**

102.1 There were no declarations of substitutes.

**102B Declarations of Interest**

102.2 There were none.

**102C Exclusion of Press and Public**

102.3 The Committee considered whether the press and public should be excluded from the meeting during the consideration of any items contained in the agenda, having regard to the nature of the business to be transacted and the nature of the proceedings and the likelihood as to whether, if members of the press and public were present, there would be disclosure to them of confidential or exempt information as defined in Section 100A(3) or 100 1 of the Local Government Act 1972.

102.4 **RESOLVED** - That the press and public not be excluded from the meeting during consideration of the following items.

**103 REVIEW OF A PREMISES LICENCE UNDER THE LICENSING ACT 2003 – BUDGENS, 76-81 QUEEN'S ROAD, BRIGHTON**

- 103.1 The Panel considered the report of the Assistant Director, Public Safety, regarding a review of a premises licence under the Licensing Act 2003 for 76-81 Queen's Road, Brighton (for copy see minute book).
- 103.2 Mr Peerless, Head of Trading Standards and Ms MacBeth, Fair Trading Officer attended the Panel, accompanied by Inspector Taylor, and Sgt Walker from Sussex Police.
- 103.3 The Licensing Manager reported that representatives of Budgens would not be in attendance at the meeting. He explained that a letter had been received from Turbervilles Solicitors, acting on behalf of Budgens. The letter confirmed that there was agreement between Budgens and Trading Standards that a request be made to adjourn the review for further consultation to take place.
- 103.4 The franchise arrangements with Koask Ltd had been terminated since the application for review had been made. The Designated Premises Supervisor had been removed and the store was now managed as a corporate store by Budgens.
- 103.5 A corporate management team had been put in place to run the store. All members of the team were personal licence holders. There was a commitment that a member of the team would be on the shop floor at all times. All staff were being re-trained and external people were being used to test purchase.
- 103.6 The Licensing Manager recommended that the Panel hearing be adjourned for one month. He explained that if officers were satisfied that satisfactory systems were in place, it might not be necessary resubmit the review to the Panel.
- 103.7 **RESOLVED** – That the panel hearing be adjourned until 2 March 2007 at 2.00 pm in Brighton Town Hall (should this prove necessary – see paragraph 103.6 above).

**104 REVIEW OF A PREMISES LICENCE UNDER THE LICENSING ACT 2003 – SOMERFIELD, 119-131, LONDON ROAD, BRIGHTON**

- 104.1 The Panel considered the report of the Assistant Director, Public Safety, regarding a review of a premises licence under the Licensing Act 2003 for Somerfield, 119-131 London Road, Brighton (for copy see minute book).
- 104.2 Representatives for Somerfield attended the meeting accompanied by their solicitor.
- 104.3 Mr Peerless, Head of Trading Standards and Ms MacBeth, Fair Trading Officer attended the Panel to make representations accompanied by Inspector Taylor, and Sgt Walker from Sussex Police. It was

established that the police had not submitted a separate representation and were present at the behest of Trading Standards. If there were any questions they would assist Mr Peerless. They would not directly address the Panel.

- 104.4 The Solicitor for Somerfield Stores Ltd informed the Panel that he had not seen witness statements attached to the agenda and required a short adjournment. The Panel agreed to the adjournment.
- 104.5 Following the adjournment, the Licensing Manager summarised the review application as set out in the report. The review had been sought by the Head of Trading Standards, following a test purchasing campaign in 2006. Actions that could be taken by the Panel were set out in paragraph 2.5 of the report. The Licensing Manager stressed that poor company practices would not be remedied by the removal of the Designated Premises Supervisor. Conditions would need to be necessary and proportionate.
- 104.6 Mr Peerless, Head of Trading Standards set out his case. He explained that the objective in holding the review was the protection of children from harm. He stressed the damage caused to children's health by alcohol consumption. Alcohol made them vulnerable to attack and caused erratic behaviour which often led to crime and disorder.
- 104.7 Mr Peerless made the point that all retailers had a responsibility not to sell age restricted items to underage persons. The Challenge 21 policy had been adopted nationally. Under age sales had been reduced to 12% in 2005 following a campaign by the police and Trading Standards. The percentage had risen to 38% in 2006.
- 104.8 During the recent campaign 137 test purchases were carried out. 42 purchases resulted in underage sales. 16 premises had taken up the offer of support from Trading Standards following the failed test purchase.
- 104.9 The Somerfield Store did operate the Challenge 21 Policy and trained staff in line with corporate procedures. However, three underage sales of alcohol, and a further sale of an age restricted item had taken place at the London Road store. Support had been offered to the store and discussions were taking place between the management and Trading Standards.
- 104.10 Mr Peerless stressed that volunteers for test purchases were required to look their age. They were not allowed to "dress up" or wear makeup. If challenged they must tell the truth. On one of the test purchases the seller was a trainee. This person was observed to be the only person on the check out at the time. A refusals book was not located on the premises on one occasion. In the assessment of officers, the supervisors desk was not in the right position, as the

supervisor could only see people from the left or the back of people to the right. It would be difficult to assess people's age from that distance.

- 104.11 Mr Peerless stressed that the premises was required to put procedures and policies in place that attempted to prevent offences occurring. Trading Standards believed that adequate management and control were currently lacking at the store. The premises had not been properly assessed to look at external factors and staff training needs.
- 104.12 With regard to staff training, it was stressed that this should not purely be about licensing law, but also about providing training that would give staff the confidence to refuse underage sales. The current training did not address the individual needs of staff.
- 104.13 Mr Peerless confirmed that as there was a Challenge 21 policy at the store, staff should have challenged anyone who looked under 21. There were a considerable number of notices in the store directed at customers and check out staff relating to under age sales.
- 104.14 The Solicitor for Somerfield set out his case. He stressed that the new Licensing Act 2003 was very much a working relationship with the premises licence holder and the authorities. Somerfield were committed to the prevention of sale of alcohol to persons under 18 and underage sales generally. Members of the management had attended high level meetings with the Home Office on this subject. Somerfield were members of the Retail of Alcohol Standards Group set up in 2005. All main supermarkets were also members of the Wines and Spirits Association. The store was a signatory to the Portman Group Code of Practice. The company operated just under 850 stores in the UK. Systems were in place to try to prevent underage sales.
- 104.15 A standard set policy for the store involved training for each member of staff before they made sales of any products. Prior to October 2006 the training was paper based and concluded with a written test. This would include training on how refusals should be dealt with. Following the training, one to one supervision was provided on the check out. Computer based training was now in place for every member of staff. Refresher training took place every 12 weeks. Training took 45 minutes.
- 104.16 Somerfield had accepted an offer from Trading Standards to give additional training at the London Road store. Some of this training might be incorporated into Somerfield's own training scheme.
- 104.17 Each member of staff had a record of training and all knew the law relating to underage sales. All the staff involved in underage sales said that they thought that the person was over 18.

- 104.18 The solicitor for Somerfield agreed that effective supervision had been lacking at the London Road store. He suggested that the Panel impose a condition on the licence to help protect children from harm.
- 104.19 The store had adopted the Challenge 21 policy and there were two refusal books in the store. The refusal books had not been made available on 11 October as they were being audited. A blank refusal book had been available in the store. A till prompt recorded refusals electronically. Over 300 age restricted items had been recorded as being refused. The solicitor for Somerfield suggested that a condition might be applied to ensure that the Challenge 21 policy was applied. It had not appeared have been to be enforced on the occasions that the underage sales were made.
- 104.20 The management also had to complete the Somerfield Simply Ready book. This was a management tool which recorded staff on duty at any particular time and a licensing check list which was inspected once a week by the Designated Premises Supervisor.
- 104.21 The solicitor for Somerfield explained the management structure of the store. He then explained that the Designated Premises Supervisor for the London Road store had a large white board in the staff room setting out a clear message that serving age restricted items to underage persons could lead to a fine or prison sentence, and setting out instructions relating to the prevention of underage sales.
- 104.22 The circumstances for each of the underage sales was explained. One member of staff had worked for the company for over 8 years and had been trained 30 times. She had attended a disciplinary hearing and received a written warning. She would be dismissed if there was any repeat of underage sales. Another test purchase involved a knife and fork set. There had been a failure of the Somerfield barcode for the product which did not bring up the till prompt. This was immediately rectified and the staff member retrained. The incident on 28 June had involved a member of staff who had worked for the store for 2 years. She had faced a disciplinary hearing and given a written warning. On 11 October a new member of staff was involved. She had already been trained.
- 104.23 Somerfield accepted that there needed to be extra safeguards and it was suggested that there be a supervisor monitoring customers at the checkouts. They could assist directly in the supervision of the sale of alcohol by under 18's and help give check out staff the confidence to refuse under age sales.
- 104.24 To sum up, two conditions were suggested by Somerfield. To impose a Challenge 21 condition and a condition relating to an additional supervisor at the checkout. These were considered sufficient to

maintain the licensing objectives.

- 104.25 The Licensing Manager summed up by stating that Somerfield were still selling alcohol to children without a convincing explanation. The Panel had a duty to balance licensing objectives against the financial impact on the business. The Panel must consider whether the imposition of conditions was sufficient. The licensing authority should take steps to enforce the licensing objectives.
- 104.26 Mr Peerless summed up by stating that his original recommendation was to suspend the licence for 2 months. He had heard that work had been carried out to re-train staff; however, he was not convinced that there had been a review of procedures at this particular premises. He now recommended that the licence for the London Road store be suspended for one month in order to undertake a risk assessment. Management procedures should be reviewed to reflect the needs of staff at this particular premises.
- 104.27 The solicitor for Somerfield summed up by reminding the panel of Section 182 of DCMS guidance relating to reviews. The Panel should identify the cause of the review and apply the licensing objectives. The test purchases were the direct result of people on the tills who knew the law relating to licensing. Somerfield were suggesting an extra line of direct supervision, which would address the problem. The store welcomed the offer of help with training by Trading standards. The panel were requested not to suspend the licence but if it should choose to suspend, it should be for the shortest possible period. A weekend suspension was suggested. The Panel were also requested to endorse the licence with appropriate conditions regarding supervision and the challenge 21 policy.
- 104.28 **RESOLVED** – That in order for the store to carry out a comprehensive risk assessment and to promote the licensing objective of protection of children from harm, the licence be suspended for a period of 28 days.

**Reasons for decision:** In making the decision the Panel has been mindful of all four licensing objectives, but specifically the protection of children from harm. The Panel has listened very carefully to all submissions at the hearing and are aware of the good record and reputation of Somerfield nationally and the work they do to combat underage sales; however, it is the premises at London Road that has been considered at this hearing. The Panel has heard about the training programme carried out by the store but would question its efficiency, as clearly some check out staff have not benefited from it. The Panel are concerned about the location of the store which makes it vulnerable to attempts by underage young people to purchase alcohol. The Panel also has concerns about the management of the store. This matter has been highlighted by

Trading Standards.

The Panel therefore considered that the store should review its procedures relating to underage sales and undertake a comprehensive risk assessment of the London Road premises paying particular attention to staff support and supervision.

The Panel solicitor reminded the parties of their appeal rights to the Magistrates Court under the Licensing Act and that appeals must be made within 21 days of written notification of the decision given at the hearing.

**The meeting concluded at 12.18pm**

**Signed**

**Chair**

**Dated this**

**day of**

**2007**