

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

**10.00am 19 JANUARY 2012**

**COMMITTEE ROOM 3, HOVE TOWN HALL**

**MINUTES**

**Present:** Councillors: Gilbey, Hyde and Rufus

**Officers:** Sarah Cornell, Licensing Officer, Rebecca Sidell, Lawyer and Giles Rossington, Senior Scrutiny Officer

**PART ONE**

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

116.1 Councillor Hyde was appointed Chairman for the meeting.

**117. PROCEDURAL BUSINESS**

**117a Declaration of Substitutes**

117.1 There were none.

**117b Declarations of Interest**

117.2 There were none.

**117c Exclusion of the Press and Public**

117.3 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 of the Act).

**117.4 RESOLVED** - That the press and public be not excluded / excluded from the meeting during consideration of Item X onwards.

**118. FOOD AND BEVERAGE 4U LTD REVIEW COMMITTEE REPORT**

**118 FOOD AND BEVERAGE 4 U LTD REVIEW**

- 118.1 The Panel considered a report of the Head of Environmental Health and Licensing for review of the premises licence for Food and Beverage 4U Ltd, 165-167 Hangleton Way, Hove. In attendance were the Mr Cavallaro, Director of Food & Beverages 4U Ltd, the premises Licence Holder; the Designated Premises Supervisor (DPS), Mr Gobeil, and the Licence Holder's solicitor, Nick Perkins. Also present were Ms S Cornell (Licensing Officer), Ms C Macbeth (Trading Standards), Ms J Irving and PC L Baldwin (Sussex Police). Ms R Sidell attended as legal advisor to the Panel.
- 118.2 The Licensing Officer provided an overview of the review. The premises licence had originally been reviewed on 11 August 2011, when a decision to revoke the licence had been made. This decision had been appealed and it had been agreed that the matter should be remitted back to the Licensing Authority for re-hearing. The documents being considered at this meeting were substantively those presented at the 11 August review, although both the Police and Trading Standards had submitted updated reports detailing recent actions with regard to the premises. Review of the premises licence was being sought after breaches including failure in Test Purchases and the discovery of counterfeit and non-duty paid alcohol at the premises. Review was on the grounds of breaches in the duties to "Prevent Crime and Disorder" and to "Protect Children from Harm". The premises were sold in May 2011 (after the major incidents detailed above took place), with Mr Cavallaro becoming the new Licence Holder. A new DPS, Mr Gobeil, was appointed in September 2011 – the Police having objected to Mr Cavallaro's attempt to appoint a different DPS prior to this.

The Licensing Officer detailed the options available to Panel members, including:

- To modify the conditions of the licence
- To exclude a licensable activity
- To remove the DPS from the licence
- To suspend the licence for a period not exceeding three months
- To revoke the licence.

- 118.3 The Chair invited Trading Standards to set out their representations. Ms Macbeth explained why the sale of counterfeit and/or smuggled goods was considered a serious matter, and explained to members that the premises had a history both of selling alcohol to minors (with failed Test Purchases in 2007, 2008 and 2011), and with selling counterfeit/smuggled goods. In 2011 Trading Standards found counterfeit wine at the premises as well as non-duty paid spirits and cigarettes. When asked to provide invoices for stock, the then Licence Holder Mr Dharni supplied invoices from a company owned by a Mr Salvatore Capuano – Mr Capuano was known to Trading Standards as someone being investigated (and subsequently convicted) for trading in counterfeit/smuggled products (Mr Capuano is also Director, alongside Mr Dharni, of a "Hangleton Express Ltd" which lists its operating address as the premises address in question, and was involved in running the off-license business prior to May 2011). When they learnt that Mr Dharni was selling the premises, Trading Standards were initially content with the sale. However, concerns were raised when the new Licence Holder attempted to have Mr Capuano appointed as DPS: Trading Standards also expressed concerns about links between the current licence holders and a Mr Comitini, who has been encountered 'helping out' at the premises. Mr Comitini is known to be a business associate of Mr Capuano – both are listed as Directors of a firm called "Wine 4U Ltd". Given these links between the new Licence Holder and persons linked with the former

Licence Holder (including people linked with criminal activity relating to the sale of counterfeit/smuggled goods– i.e. Mr Capuano), Trading Standards were very concerned that the change in Licence Holders did not amount to any genuine change in the people involved in the business, and therefore believed that it was likely that the business would continue to be used for criminal activities.

- 118.4 In response to questions from the applicant's solicitor, Ms Macbeth told the Panel that Trading Standards had continuing concerns about potential breaches of the licensing conditions with regard to crime and disorder, although since the premises changed hands there had been no serious breaches recorded and no issues with the sale of illegal alcohol.
- 118.5 In response to questions from the applicant's solicitor, Ms Macbeth told the Panel that Trading Standards were convinced that there were significant links between the current Licence Holder and Mr Capuano and between the Licence Holder and Mr Comitini (who 'helps out' at the premises).
- 118.6 The Chair invited the Police to set out their representations. Ms Irving told the Panel that Sussex Police supported Trading Standards in this instance, being unconvinced that the current Licence Holder would promote the licensing objectives, and being worried by links between the current Licence Holder and persons involved in illegal alcohol sales.
- 118.7 The Chair invited the Licence Holder to set out his representations. The Licence Holder's solicitor told the Panel that there are family connections between Mr Cavallaro and Mr Capuano and Mr Comitini, but no business links. Mr Capuano was involved in selling the premises to Mr Cavallaro and advised on matters regarding this transfer, but has not subsequently been associated with the business. At this time, Mr Cavallaro was unaware of Mr Capuano's poor reputation. The Panel was also told that although there was a long history of serious problems with the premises, all these occurred while Mr Dharni was Licence Holder; there had been no serious problems since Mr Cavallaro took over, with all minor problems now remedied.
- 118.8 In response to questions from Panel members, Mr Cavallaro told the panel that he had no experience of running an off-licence, having studied electronics in Italy prior to buying the premises at 165-167 Hangleton Way. Mr Cavallaro is not actively involved in the business, other than living in the flat above it.
- 118.9 The Chair asking for summaries.

The Licensing Officer reminded the panel of the Licensing Objectives to prevent crime and disorder and protect children from harm. Panel members were also reminded of the options open to them, including revocation of the premises licence. The Licensing Officer averred that revocation was a reasonable response to very serious breaches in licensing such as the sale of counterfeit or smuggled alcohol and in line with both Government guidance on dealing with 'problem premises' and the Council's Licensing Policy.

Ms Macbeth told members that Trading Standards only made applications to revoke a licence after very serious consideration, but in this instance believed that the problems were severe enough to warrant such an application, particularly as they believed it was

very likely that there were significant links between the current Licence Holder and persons involved in criminal activities.

Ms Irving told the Panel that they should consider whether the current Licence Holder was likely to promote the licensing objectives, as was required.

The Licence Holder's solicitor told the Panel that the Licence Holder does promote the licensing objectives – the last Licence Holder may well not have done so, but he was no longer involved with the business and there have been no serious problems while Mr Cavallaro had been in charge. It was therefore unclear why Trading Standards should be pushing for revocation, as there were no current problems associated with the premises and no substantive link between the current regime and the former one had been proven.

118.10 Ms Siddell enquired whether any party wished to suggest potential licence conditions before the Panel retired to consider their decision. No party put forward any such suggestions.

118.11 The Panel retired to make their decision.

**118.12 RESOLVED:**

The Panel have considered this application for review, read the relevant papers and have listened carefully to the representations made today. We have had regard to guidance from the Secretary of State and to the Council's Statement of Licensing Policy.

We must take such steps as we consider necessary for the promotion of the Licensing Objectives. We have carefully considered all of the options available to us.

The Panel is extremely concerned about the history of this premises and the criminal activity which has taken place there, namely underage sales and the sale of smuggled tobacco and alcohol, all of which undermine the Licensing Objectives. We are also concerned about the possibility of formal links between the current licence holder and individuals implicated in counterfeit sales.

However, the Panel recognises that there has been a change of ownership, and that since this change there have only been minor breaches of the licensing conditions, which have now been addressed.

Our actions should be no more than a necessary and proportionate response. Therefore, in this case, the Panel wishes to give a clear warning to the licence holder, in effect a 'yellow card', that any further breach of the Licensing Objective in connection with these premises leading to a further review will give rise to a presumption of revocation. This is in accordance with our enforcement policy with regard to 'problem premises'.

**119. PART TWO**

The meeting concluded at Time Not Specified

Signed

Chairman

Dated this

day of