

## **Licensing Act Sub-Committee - Record of Hearing held on Tuesday 18 September 2012 at 6.00pm**

**MEMBERS:** Councillor Mrs HEAPS (Chairman); Councillors MURDOCH and THOMPSON.

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### **1 Declarations of Disclosable Pecuniary Interests (DPIs).**

None were received.

### **2 Application for New Premises Licence – Shams Convenience Store**

The Chairman introduced members and officers present and detailed the procedure to be followed at the meeting.

The Licensing Manager outlined the report regarding the application for a new premises licence for the Shams Convenience Store, Eastbourne.

The premises were located in the Cumulative Impact Zone defined as when a significant number of licensed premises are concentrated in an area. When an area becomes saturated it creates exceptional problems that undermine the promotion of one or more of the licensing objectives. When valid representations are received in respect of premises located within the area identified as being subject to the Council's Cumulative Impact Policy, a rebuttable presumption is created that the application is refused.

Mr Hussain, on behalf of the applicant asked for clarification over the Sub-Committee's reason for refusing the application at a previous hearing on the 23<sup>rd</sup> July 2012 so that those concerns could be addressed at this meeting. Councillor Heaps clarified that the Sub-Committee had refused the application because they did not consider that the applicant had provided sufficiently compelling evidence to show that the premises would not exacerbate existing issues in the locality or undermine the promotion of the Licensing Objectives to rebut the presumption against the granting of the application arising from the Council's Cumulative Impact Policy.

Sussex Police had made written representations as a responsible authority under the prevention of crime and disorder licensing objective.

Mr Savill representing Sussex Police addressed the Sub-Committee outlining the concerns that had been identified by Sussex Police. Mr Savill made reference to a letter that had been submitted by the applicant and circulated prior to the meeting that was in response to the representation made by Sussex Police. The letter had suggested that the applicants premises was not situated in the main area identified in the Cumulative Impact Policy. Mr Savill advised the Sub-Committee that this point is irrelevant because the road in which the premises lie had been included in the Policy for a reason.

It was also stated that the applicant had indicated that the sale of alcohol would only be a nominal part of the store. Sussex Police believed that refusal

of this application would not hinder the ordinary trading that already occurs in the store.

Mr Savill then outlined the Cumulative Impact Policy to the Sub-Committee and Sussex Police state that the sheer number of people inside this area can give rise to an increase in crime and disorder. The Policy clearly states that "the effect of adopting a Cumulative Impact Policy is to create a rebuttable presumption that applications for a new premises licence, club premises certificates or material variations to such will normally be refused if relevant representations are received" and it is up to the applicant to prove to the Sub-Committee that granting the premises licence would not exacerbate existing issues in the locality or undermine the promotion of the Licensing Objectives.

Mr Savill also informed the Sub-Committee that the applicant had referred to the Cumulative Impact Policy dated 25 July 2007 in their letter when it is no longer a relevant policy as it had been updated in 2011.

The Sub-Committee were told that it wasn't relevant how well the shop is run or how well customers are behaved inside because the impact comes from drink being taken from the shop and this would have a detrimental effect on the existing saturated area. It was acknowledged that the applicant had taken steps to help promote the Licensing Objectives as indicated by Section P of the revised application but this was at the very least expected.

Mr Savill concluded that it isn't enough for the applicant to insist their will be no negative cumulative impact and it is not up to Sussex Police to prove that an increase in crime and disorder will arise because the Cumulative Impact Policy is there for the applicants to address and produce enough evidence to rebut the presumption.

Mr Hussain, representing the applicant then addressed the Sub Committee. He acknowledged that the Cumulative Impact Policy was there to address the significant problems Eastbourne Town Centre had with street drinkers but questioned whether there was any evidence to suggest that people were drinking exclusively within the Cumulative Impact Zone.

Mr Maynard, representing Sussex Police responded by informing the Sub-Committee that a person does not necessarily need to be under the influence of alcohol to contribute towards the Cumulative Impact of the area.

Mr Hussain acknowledged that the premises was located right on the edge of the Cumulative Impact Zone which already contained 21 premises licensed for alcohol off-sales but did not believe an additional premises selling alcohol would contribute or put pressure on nightclubs or increase the queues for taxis etc. The Sub-Committee was informed that the premises was designed for local residents that lived near the area.

Mr Maynard responded by suggesting the premises would provide another outlet for juvenile street drinkers to steal from and lead to drinking on benches. Mr Hussain believed that there was no evidence to support the statement and could apply to anyone of the 21 premises within the Cumulative Impact Zone. Mr Maynard informed the Sub-Committee that there had already been 200 incidents inside the Cumulative Impact Zone since April as evidence of anti social behaviour.

The Sub-Committee acknowledged the applicant's case in support of granting the licence and appreciated that the Cumulative Impact Policy is there to protect the members of the public. Mr Maynard clarified that it was the view of Sussex Police that another premises totalling 22 inside the Zone would contribute negatively to the area.

Mr Hussain discussed the representations made by Sussex Police and informed the Sub-Committee that it was not unlawful or prohibited to sell alcohol within the Cumulative Impact Zone and it was not sufficient to argue that the premises would have a negative Cumulative Impact on the basis of it being one additional premises within the Zone.

Mr Hussain then made reference to section 4.3 of the Council's Cumulative Impact Policy that highlighted the concern about the "binge drinking culture" and the products associated with it such as alcopops and cut price alcohol. Mr Hussain advised the Sub-Committee that alcopops would not be sold at the premises nor would alcohol be sold as a loss leader or at a discounted price. As a result of this, the store would not be targeting young people who would have to look elsewhere for cut price alcohol. If the applicant breached the rules, then the premises licence would be appropriately revoked.

Section 4.3 also made reference to large scale vertical drinking establishments. Mr Hussain advised that this was not relevant because the applicants premises was not a vertical drinking establishment nor was it open to the early hours of the morning.

Mr Hussain highlighted that the policy mentioned that one of the issues relating to cumulative impact referred to premises providing late night entertainment between the hours of 11:00pm – 5:00 am. Reports had indicated that that Anti-Social behaviour is most prominent after midnight but this would not be applicable to the premises because the latest it would be open was 11:00pm.

Mr Hussain concluded that that only section of the policy that could be held against the applicant was the drinking culture and the Sub-Committee was assured that cut price alcohol would not be sold.

The Sub-Committee asked the applicant for clarification over where the alcohol would be sold on the premises. Mr Hussain referenced Section P of the application that indicated that alcohol would only be displayed in a supervised area and spirits would be kept behind and adjacent to the kiosk area so as to be out of reach of children.

Mr Hussain clarified that the applicant had agreed to join the shopwatch scheme and that they would withdraw from the Premier franchise should they seek to impose the reduced price selling of alcohol. Mr Hussain also gave an overview of the CCTV system that would be implemented.

Mr Hussain believed that the applicant had addressed all the concerns and implemented conditions suggested from Sussex Police into the application and that the lack of new evidence from Sussex Police meant that the applicant was unable to address any new concerns.

The Sub-Committee questioned the applicant as to whether the sale of alcohol was essential to the survival of the business and what percentage of the products would be alcohol. Mr Hussain responded that it was estimated that

around 5% of the products would be alcohol and while not a major part of the store was essential for the business starting off as part of a franchise.

Following all the evidence presented to the Sub-Committee, Mr Savill summarised the arguments raised by Sussex Police in objection to this application, which was appended to the report. Mr Savill advised that the applicant had suggested that alcohol would be brought outside the Cumulative Impact Zone and then brought inside the Zone. He informed the Sub-Committee that this should be irrelevant when doing their deliberations because the policy indicates that the premises is located inside the Zone and therefore creates a rebuttable presumption to reject the proposal unless the applicant could prove otherwise. Mr Savill concluded by referencing the Secretary of State's Guidance in support of Sussex Police's representation and reiterated their recommendation of refusal.

Mr Hussain summarised on behalf of the applicant, also referring to the Secretary of State's Guidance to support the application. It was again reiterated that Sussex Police had not shown any evidence to provide that the premises would undermine the promotion of the licensing objectives. Mr Hussain concluded by suggesting that the applicant had met the required criteria to accept this application and had undertaken steps and imposed conditions that had been suggested by Sussex Police to help promote the licensing objectives.

The Legal Advisor concluded that both cases had been well argued and both were supported by extracts of the Cumulative Impact Policy and the Secretary of State's Guidance. He advised that the onus was still on the applicant to show that the application would not add to the existing licensing problems prevalent in the Town Centre. The proper approach in this case would be to assess whether the applicant had offered all reasonable safeguards and conditions to mitigate the impact of the premises and whether these safeguards and conditions were likely to be effective.

The Sub-Committee then retired to consider and determine the application having regard to the representations submitted, the four licensing objectives and the Council's Statement of Licensing Policy.

Having taken into account all the relevant considerations the Sub-Committee reconvened and announced the decision as follows.

**RESOLVED:** That the new premises application in respect of the Shams Convenience Store be granted as set out in the attached appendix.

The meeting closed at 8.05 p.m.

**Mrs C Heaps  
Chairman**

# Eastbourne Borough Council

## Decision Notice

### Licensing Act Sub-Committee held on Tuesday 18 September 2012

Premises Licence Holder:	Mr Rahmani Mehrab
Premises:	Shams Convenience Store
Reasons for Hearing:	Relevant representations received from responsible authorities under the prevention of crime and disorder licensing objective arising from the Council's Cumulative Impact Policy.
Parties in attendance:	<p>Applicant: Mr Nazir Ahmed Sepahi, Mr Rahmani Mehrab (Premises Supervisor) and Mr Hussain (Stephen Rimmer LLP)</p> <p>Responsible Authorities: Mr Jules Maynard (Sussex Police) and Mr Peter Savill (Barrister)</p> <p>Licensing Authority: Mr Jay Virgo (Licensing Manager), Mr Adrian Albon (Environmental Health Technician) and Mr Geoff Johnson (Regulatory and Litigation Lawyer).</p>
Decision made:	To grant the new Premises Licence as follows:

#### **Open to the Public:**

Monday – Saturday	08.00 hours – 23.00 hours
Sunday	10:00 hours – 22:30 hours
Good Friday	08:00 hours – 22:30 hours
Christmas Day	12:00 hours – 15:00 hours 19:00 hours – 22:30 hours

#### **Supply of Alcohol on the Premises**

Monday – Saturday	08.00 hours – 23.00 hours
Sunday	10:00 hours – 22:30 hours
Good Friday	08:00 hours – 22:30 hours
Christmas Day	12:00 hours – 15:00 hours 19:00 hours – 22:30 hours

Subject to the following conditions:

The applicant follows the steps indicated in Section P of the revised application to promote the four Licensing Objectives

with the additional following requirements.

- 1) An additional personal licence holder be available to supervise staff and be trained on how to deal with the sale of alcohol and aggressive customers.
- 2) The applicant work with the Licensing Manager and Sussex Police to ensure the licensing objectives are promoted. It was also requested that a 6 month review be undertaken by EBC's Licensing Team.

Reasons for Decision: The Sub-Committee has granted the application for a Premises Licence subject to the conditions specified having given due weight to the evidence placed before it, as well as the regulations and guidance under the Licensing Act 2003, the licensing objectives and the Council's Statement of Licensing Policy.

The Sub-Committee has weighed up the applicant's submissions alongside the representations made by the responsible authorities (Sussex Police) with particular regard to the Cumulative Impact Policy and the promotion of the Licensing Objectives. On balance it was considered that the applicant had provided sufficient evidence to rebut the presumption against granting of the application arising from the Council's Cumulative Impact Policy.

The additional conditions to the licence proposed by the Sub Committee were agreed as necessary to promote the licensing objectives.

Date of Decision: 18 September 2012

Date decision notice issued: 25 September 2012

A written or electronic copy of this Notice will be publicly available to all Parties and published on the Council's website.

## **RIGHT OF APPEAL**

Under the provisions of S.181 and Schedule 5 of the Licensing Act 2003, there is a right of appeal against the decision of the Licensing Sub-Committee, should you be aggrieved at the outcome.

This right of appeal extends to the applicant in the case of refusal or restrictions on the licence, or the imposition of conditions to the licence. The right of appeal also extends to persons who have made representations where the licence has been granted, or that relevant conditions have not been imposed on the licence.

Full details of all the rights of appeal can be found within Schedule 5 of the Act. If parties wish to appeal against the Sub-Committee's decision, this must be made to the Magistrates Court, Old Orchard Road, Eastbourne, BN21 1DB within 21 days of receipt of this decision notice.