

Licensing Act Sub-Committee - Record of Hearing held on Wednesday 9 January 2013 at 6.00pm

MEMBERS: Councillor SHUTTLEWORTH (Chairman); Councillors Mrs HEARN and Mrs WEST.

1 Declarations of Disclosable Pecuniary Interests (DPIs).

None were received.

2 Application for New Premises Licence – Kass 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 Kass Convenience Store, Eastbourne. The proposed trading hours were detailed.

The premises were located in the Cumulative Impact Zone defined as where 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.

The application, appended to the report had proposed to open the premises and supply alcohol from 08:00 hours to 23:00 hours, Monday – Thursday and Sunday, with the exception being Friday and Saturday, where the closing time would be extended to 24:00 hours.

Mr Chris Richards, Town Centre Manager had made written representations as an interested party under the prevention of public nuisance and prevention of crime and disorder licensing objectives and this was appended to the report. Councillor Shuttleworth gave an overview of the representation to all present at the meeting.

Representations had also been made by Sussex Police under the prevention of crime and disorder licensing objective and highlighted key elements from the Council's Cumulative Impact Policy.

Mr Spink, Barrister representing Sussex Police addressed the Sub-Committee outlining the concerns that had been identified. He explained to the Sub-Committee that there were already 22 premises licensed for alcohol off-sales within a 600 metre radius of the premises. Sussex Police believed that an additional premises selling alcohol would have a detrimental effect on the area and exacerbate existing issues of crime and disorder.

The Sub-Committee was informed that Eastbourne Town Centre had a significant problem with street drinkers congregating in large numbers, leading

to abusive and intimidating behaviour towards shopkeepers and passers-by. This point was illustrated by the removal of public seating within the Terminus Road area and the issue of fourteen anti-social behaviour orders to street drinkers over the last two years.

Mr Spink then made reference to a schedule of incidents, circulated prior to the meeting involving street drinkers within Eastbourne Town Centre for the period of 1 April 2012 – 23 November 2012. There had been a reported 346 incidents of theft and anti-social behaviour committed by street drinkers, with 44 being reported on Terminus Road where the premises lie. Mr Spink highlighted several incidents that Sussex Police had deemed notably serious and requested that the Sub-Committee note these during deliberation.

The Sub-Committee was informed that such was the concern about the number of incidents occurring in Eastbourne Town Centre that Sussex Police, in partnership with Eastbourne Borough Council instigated a Dispersal Order on the 24 August 2012, that expired on the 23 November 2012. During that period, an estimated 80 street drinkers were dispersed from numerous locations.

Mr Spink advised the Sub-Committee that it was not up to Sussex Police to prove that the premises would undermine the licensing objectives because the Cumulative Impact Policy is there for the applicant to address and produce enough evidence to rebut the presumption.

Sussex Police believed that no conditions imposed by the applicant could resolve the problems of congregation, regardless of how well run the premises were. Mr Spink therefore urged the Sub-Committee to refuse the application.

Mr Panchal, representing the applicant, clarified to the Sub-Committee that although the schedule of incidents circulated by Sussex Police had indicated 44 incidents on Terminus Road, only 12 had resulted in charges.

Mr Panchal questioned whether Sussex Police did not want anymore off-licensed premises within the Cumulative Impact Zone and asked if this was based on need. The Licensing Manager clarified that each case was considered on its own merits and that the issue of commercial need was a matter for the market to decide and was not a matter for the Sub-Committee to consider.

Mr Spink responded that although the Cumulative Impact Policy creates a rebuttable presumption, no application should be automatically refused because of its location. It was down to the applicant to overcome the Cumulative Impact Policy and present evidence to the Sub-Committee. Sussex Police however believed that the applicant had not provided enough evidence to suggest the premises would not exacerbate existing issues.

Mr Panchal addressed the Sub-Committee on behalf of the applicant and proposed designated premises supervisor Mr Rahmani, who was present at the meeting. Mr Panchal outlined Mr Rahmani's qualifications and previous employment history during his 13 years in Eastbourne. Mr Panchal referenced Mr Rahmani's strong managerial background, albeit not within licensed premises, that he felt would help him promote the four licensing objectives should the application be granted.

Mr Panchal acknowledged that the premises were located in the Cumulative Impact Zone, however suggested that the applicant had taken suitable steps

to promote the four licensing objectives in Section P of the original application, appended to the report.

Mr Panchal then made reference to a list of proposed additional conditions, circulated prior to the meeting for the Sub-Committee's consideration. Mr Panchal highlighted condition 8 which would ensure that products popular amongst street drinkers such as cheap beers, lagers, cider or miniatures of spirits above 5.6% abv (alcohol by volume) would not be sold at the premises. Condition 4, which would enforce the Challenge 25 policy and operate a "no ID, no sale" policy would help promote the licensing objective of the prevention of children from harm.

The Sub-Committee was then given an overview of the other conditions suggested by the applicant, which included the installation of a 24 hour CCTV system, the training of all staff to ensure that no persons under 18 would be sold alcohol and a refusal book that would record all incidents where sale was refused. Mr Panchal advised that if the CCTV was not operational, all licensing activity would be stopped until the fault had been resolved. The premises would also sign up to be a member of the Shopwatch scheme. The Licensing Manager reminded the Sub-Committee that if granted, the licence conditions would need to be adhered to in order to comply with the Licensing Act 2003, otherwise licensable activities would have to cease in any event.

Mr Panchal reiterated that the suggested conditions and Section P of the application demonstrated that the applicant had addressed the Cumulative Impact Policy and would not undermine the licensing objectives. Mr Panchal added that the applicant would be happy to work with Sussex Police and implement any additional conditions to help promote the four licensing objectives.

The Licensing Manager then questioned Mr Panchal on the type of training that would be undertaken, the quantity of staff on the premises in addition to the appointment of registered door supervisors. Mr Panchal explained that the training of staff would be undertaken by contractors and all records of training would be logged in a record book and updated every 6 months. At least two staff members would be present on the premises at all times. Mr Panchal indicated that there was currently no plan to appoint registered door supervisors however, if necessary, the applicant would be happy to comply with this request.

The Sub-Committee remained concerned that despite condition 8 indicating that no cheap beers, lagers, cider or miniatures of spirits above 5.6% abv would be sold at the premises, a street drinker would instead buy more of an under strength alcoholic product to achieve the same desired effect. It was also a concern that two staff members on the premises would not be sufficient should a drunk and disorderly person enter the premises being confrontational. Mr Panchal responded that the size of the premises wasn't that large and two staff members were considered sufficient. He did advise however that should an incident occur, more staff members would be present on the premises.

It was also a concern to the Sub-Committee that an additional premises would stretch the resources of Sussex Police, given the quantity of incidents involving street drinkers that had occurred within the Cumulative Impact Zone. Mr Rahmani addressed the Sub-Committee and referenced an incident at a

previous job, where he was able to calmly talk down an individual who was drunk and disorderly.

In a response to a question from the Licensing Manager, Mr Rahmani advised the Sub-Committee that he had held a personal licence for 6 months although he had no previous experience of managing an off-licensed premises.

Sussex Police questioned how many members of staff had previous experience of dealing in alcohol sales. Mr Rahmani clarified that no staff had currently been appointed but all would receive the required training, as detailed earlier.

Following a question from the Sub-Committee, Mr Panchal clarified proposed condition 9 that would ensure that no individual beers, lagers, ciders or spirit mixers would be sold at the premises.

Following all the evidence presented to the Sub-Committee, Mr Spink summarised the arguments raised by Sussex Police and reiterated their objection to the application and urged the Sub-Committee to refuse the application. He added that it was a concern that the applicant had limited experience and importantly no managerial experience of alcohol sales.

Mr Panchal responded that the applicant would receive all the required training that would help ensure the licensing objectives were promoted. He concluded by again referencing the proposed conditions that he felt addressed the concerns arising from the Council's Cumulative Impact Policy

The Sub-Committee then retired to consider and determine the application having regard to the representations submitted, the four licensing objectives, the Council's Statement of Licensing Policy and Cumulative Impact 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 Kass Convenience Store be refused as set out in the attached appendix.

The meeting closed at 7.21 p.m.

**A Shuttleworth
Chairman**

Eastbourne Borough Council

Decision Notice

Licensing Act Sub-Committee held on Wednesday 9 January 2013

Premises Licence Holder:	Mr Sultan Rahmani
Premises:	Kass Convenience Store, 28 Terminus Road
Reasons for Hearing:	Relevant representations received from interested parties and responsible authorities under the prevention of public nuisance and prevention of crime and disorder licensing objectives, arising from the Council's Cumulative Impact Policy.
Parties in attendance:	<p>Applicant: Mr Sultan Rehmani (Premises Supervisor) and Mr Surendra Panchal (Licensing Agent)</p> <p>Responsible Authorities: Inspector Rosie Ross (Sussex Police), Mrs Cathy Wolfe (Sussex Police) and Mr Peter Spink (Barrister)</p> <p>Licensing Authority: Miss Kareen Plympton (Licensing Manager) and Mr Geoff Johnson (Regulatory and Litigation Lawyer).</p>
Decision made:	That the application be refused on the following grounds:
Reasons for Decision:	<p>The Sub-Committee gave due weight to the submissions placed before it, namely the written submission of Mr Chris Richards (Town Centre Manager), the responsible authorities (Sussex Police) and the applicant as well as the regulations and guidance under the Licensing Act 2003, the licensing objectives, the Council's Cumulative Impact Policy and the Statement of Licensing Policy.</p> <p>Having weighed up all the evidence it was considered, in particular the detailed evidence given from Sussex Police, the granting of the application would be likely to exacerbate the incidents of alcohol related crime and disorder in the Town Centre.</p> <p>The applicant had therefore clearly not rebutted the presumption against the granting of the application arising from the Council's Cumulative Impact Policy and the application should therefore be refused.</p>
Date of Decision:	9 January 2013
Date decision notice issued:	21 January 2013

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.