

# LICENSING ACT 2003 SUB-COMMITTEE

Friday, 8 May 2009

Present:

Councillors	I O Coates	C Teggin
	W J Davies	P Williams
	H Smith	

## 102 APPOINTMENT OF CHAIR

Resolved -

(1) That Councillor H Smith be appointed Chair for the morning session to consider the application in respect of Simply Food and Drinks.

(2) That Councillor C Teggin be appointed Chair for the afternoon session to consider the application in respect of Terrace C.

## 103 DECLARATIONS OF INTEREST

Members were requested to consider whether they had any personal or prejudicial interests in connection with any items on the agenda and, if so, to declare them and state what they were.

No such declarations were made.

## 104 SIMPLY FOOD AND DRINKS, WELLINGTON ROAD, OXTON

The Director of Regeneration reported upon an application that had been received from Merseyside Police for the review of a Premises Licence for Simply Food and Drinks, Wellington Road, Oxtan.

These premises currently have a Premises Licence for the following licensable activities:

Supply of Alcohol  
Monday to Saturday 08:00 to 23:00  
Sunday 10:00 to 22:30

Non-Standard Timings  
Good Friday 08:00 to 22:30  
Christmas Day 12:00 to 15:00 and 19:00 to 22:30

A copy of the Premises Licence setting out the above hours and conditions attached to the Licence was available.

The Director advised that the Sub-Committee may, having regard to the application for review and any relevant representations, take such of the following steps as it considered necessary for the promotion of the licensing objectives:

- Modify the Licence conditions (permanently or for a temporary period of up to 3 months).
- Exclude a licensable activity from the scope of the Licence (permanently or for a temporary period of up to 3 months).
- Remove the Designated Premises Supervisor (if applicable).
- Suspend the Licence for a period of not more than 3 months.
- Revoke the Licence.

Sergeant D Peers, Police Licensing attended the meeting and advised that the grounds for review were in relation to the prevention of crime and disorder and the protection of children from harm following underage sales taking place at the premises.

Mr N Chesters, Trading Standards was also in attendance.

Mr M Stafford, Solicitor, attended the meeting to represent Simply Food and Drinks together with Mr A Wells, representative of Wine Cellar.

The Licensing Officer confirmed that all relevant documentation had been sent and received and no further documents had been submitted.

Sergeant Peers reported that the premises were located in a residential area of Oxtown Village and that the grounds for review were that two sales of alcohol had been made to underage persons within the last seven months, on 17 September 2008 and 5 March 2009. Sergeant Peers gave details of the two occasions when the test purchasers had been sold alcohol at the premises. Sergeant Peers referred to the sale made on 5 March 2009 and pointed out that the seller had attended a training session conducted by Trading Standards the evening before the sale took place. Sergeant Peers witnessed the sale and reported that there had been a large queue at the time, with only one till working and that the seller was obviously trying to reduce the queue and not paying particular attention to age.

Sergeant Peers reminded Members of the Sub-Committee of the serious issues of selling to underage persons with regard to the impact on anti-social behaviour (believed to be fuelled by alcohol), the health of young people and also that it could make young people more vulnerable to becoming victims of crime. This clearly undermined the licensing objective of protecting children from harm. However, Sergeant Peers reported that the premises had a good history prior to these sales being made and therefore sought a number of conditions to be attached to the Premises Licence, notwithstanding that Members could impose further sanctions if they so wished.

Sergeant Peers responded to questions from Members of the Sub-Committee and Mr Stafford.

Mr Chesters reported that the only contact Trading Standards had had with the business was on 15 August 2007 which was prior to the first sale which had been made. He referred to paragraph 11.25 of the DCMS guidance and the protection of

children from harm. He also referred to the results of the research of drinking habits of 15/16 year olds carried out by Trading Standards in 2007. Mr Chesters stated that Trading Standards were concerned that despite due diligence being in place it was not properly being observed. Mr Chesters wholly supported the conditions proposed by Merseyside Police.

Mr Chesters responded to questions from Members of the Sub-Committee.

Mr Stafford was in support of the conditions outlined by Merseyside Police being attached to the Premises Licence, with a couple of small amendments. He reported that he agreed with much of what had been said by Sergeant Peers. He referred to the due diligence bundle which had been supplied and felt that the Company had a legal and social responsibility for its employees. He pointed out various policies employed at the premises in relation to age related sales - quizzes and questionnaires undertaken and training given to employees. He referred to the refusals report which showed that over 500 challenges had been made at the premises. He felt that in the circumstances the proportionate response that should be made was that the conditions proposed by Merseyside Police be attached to the Premises Licence.

Mr Stafford responded to questions from Sergeant Peers, Mr Chesters and Members of the Sub-Committee.

Members of the Sub-Committee considered evidence presented by Merseyside Police and Trading Standards relating to alcohol being sold to under aged persons which seriously undermined the Licensing Objectives in respect of the Protection of Children from Harm and the Prevention of Crime and Disorder. Members took into account the evidence produced in respect of due diligence documentation that was presented.

In determining the application the Licensing Act 2003 Sub-Committee had regard to the licensing objectives, the Council's Statement of Licensing Policy and the Department of Culture and Media and Sport Guidance issued under Section 182 of the Licensing Act 2003.

**Resolved -**

**(1) That in accordance with Regulation 14(2) of the Licensing Act 2003, the public be excluded from the meeting during consideration of the application.**

**(2) That the following conditions shall be attached to the Premises Licence:**

- Adoption of a challenge 30 policy and display of appropriate posters.**
- The premises must only accept a passport, a photo driving licence or a PASS accredited identification in support of till checks.**
- Maintenance of refusal log with regular checks by management to ensure that it is being used.**
- Premises are adequately staffed at all times by fully trained persons to prevent underage sales.**

- **All staff receive regular training with training records maintained, and that regular staff also attend Trading Standards training when arranged.**

## 105 **TERRACE C, 184 TELEGRAPH ROAD, HESWALL**

The Director of Regeneration reported upon an application received from Marcus Bemrose to vary a Premises Licence in respect of premises known as Terrace C, 184 Telegraph Road, Heswall.

The application to vary the Premises Licence was as follows:

Supply of Alcohol

Sunday to Thursday 11:00 to 00:30  
Friday and Saturday 11:00 to 01:00

Hours Open to the Public

Sunday to Thursday 11:00 to 01:00  
Friday and Saturday 11:00 to 01:30

Regulated Entertainment (Live Music, Recorded Music, Performance of Dance and Anything of a Similar Description)

Sunday to Thursday 11:00 to 01:00  
Friday and Saturday 11:00 to 01:30

Entertainment Facilities (Facilities for Making Music, Dancing and Anything of a Similar Description)

Sunday to Thursday 11:00 to 01:00  
Friday and Saturday 11:00 to 01:30

The applicant had also applied to vary the hours of Non-Standard Timings.

In respect of this application, two representations had been received from local residents. The representations related to noise nuisance emanating from the premises caused by entertainment. Copies of the representations were available.

Mr Bemrose, Premises Licence Holder, attended the meeting together with Mr Watson, General Manager and Mr Murch, Assistant Manager.

Mr Moore and Mr Fitzpatrick, local residents were also in attendance.

The Licensing Officer confirmed that all documentation had been sent and received and that a late representation had been received by a resident to which Mr Bemrose raised no objection and this was therefore taken into consideration by the Sub-Committee. Mr Moore submitted some photographs which demonstrated the proximity of the premises to local residents.

Mr Bemrose addressed the Sub-Committee and outlined the reasons for the application, in that it was for commercial reasons and that he wanted a level playing field in line with other premises in the vicinity. He reported that although the objections were because of noise emanating from the premises he had not had any contact from Environmental Health and they had made no representations. He explained that the music had been turned off on the terrace and that the doors leading to the terrace were shut at 10.30 pm. He proposed that as some of the complaints were regarding general noise emanating from the terrace the number of people allowed onto the terrace could be regulated. Mr Bemrose stated that he would be willing to work together with local residents in order to resolve any problems raised.

Mr Bemrose proposed that drinks would not be allowed to be taken out onto the terrace after 11.00 pm and amended the hours applied for as follows:

#### Regulated Entertainment

Sunday to Thursday 11:00 to 00:30  
Friday and Saturday 11:00 to 01:00

#### Entertainment Facilities

Sunday to Thursday 11:00 to 00:30  
Friday and Saturday 11:00 to 01:00

Mr Bemrose responded to questions from Mr Abraham, Solicitor to the Sub-Committee.

Mr Moore outlined the problems he had experienced relating to noise and disturbance at night. Residents had suffered from this problem since 2006 and he explained that the noise was projected towards his property. Mr Moore felt that the terrace had become far busier since the smoking ban had been in place. Mr Moore had been in contact with Environmental Health and Mr Zorn had visited his premises and measured the noise levels which had exceeded acceptable levels. Mr Moore referred to the planning permission which stated that no trading should take place between the hours of 23:30 and 08:00 and reported that the premises had been trading until 01:00 at weekends. Mr Moore therefore urged that Members refuse the application.

Mr Fitzgerald addressed the Sub-Committee and expressed his wishes that they work together as a community. He felt that restricting the time that drinks be allowed to be taken out onto the terrace would solve some of the problems raised.

Mr Bemrose reported that he had not been aware of the restrictions on the planning permission at the premises and stated that the premises would now not be trading after 11.30 pm until a further application had been made to the Planning Committee.

Members of the Sub-Committee had regard to the representations made by Local Residents. Representations were made in respect of the Prevention of Public Nuisance. Members considered evidence from residents that should the application be granted this would create further disturbances at a later hour than was already being caused from entertainment emanating from the premises and customers

occupying the outside terrace of the premises. The premises were situated close to residential properties and it was considered that granting the application for extended hours would undermine the Licensing Objective in respect of the Prevention of Public Nuisance.

In determining the application the Licensing Act 2003 Sub-Committee had regard to the Licensing Objectives, the Council's Statement of Licensing Policy and the Department of Culture, Media and Sport Guidance issued under section 182 of the Licensing Act 2003.

**Resolved -**

- (1) That in accordance with Regulation 14(2) of the Licensing Act 2003, the public be excluded from the meeting during consideration of the application.**
- (2) That the application to vary the Premises Licence be refused.**