

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

**10.00am 16 MARCH 2018**

**HOVE TOWN HALL, ROOM G91 - HOVE TOWN HALL**

**MINUTES**

**Present:** Councillor ; Deane, O'Quinn and Simson

**Officers:** Jim Whitelegg (Licensing Officer), Liz Woodley (Legal Adviser) and Tom McColgan (Democratic Services Officer)

**PART ONE**

**88 TO APPOINT A CHAIR FOR THE MEETING**

88.1 Councillor O'Quinn was appointed Chair for the meeting.

**89 WELCOME & INTRODUCTIONS**

89.1 All parties were welcomed to the meeting and everyone present introduced themselves.

**90 PROCEDURAL BUSINESS**

**90a Declaration of Substitutes**

90.1 There were none.

**90b Declarations of Interest**

90.2 There were none.

**90c Exclusion of the Press and Public**

90.3 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).

90.4 **RESOLVED** - That the press and public be excluded from the meeting during consideration of any Part 2 matters.

**91 INTERNATIONAL FOOD & WINE LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)**

91.1 The Panel considered a report of the Executive Director of Neighbourhoods, Communities and Housing in relation to an application for a new licence. Present at the hearing were: Donna Lynsdale (Licensing Authority), Cat Macbeth (Trading Standards), Hannah Staplehurst (Sussex Police), Peter Savill (Sussex Police's Counsel), Baris Yukselen (Sole Director of Selin Ltd, the Applicant), Mahir Kilic (Applicant's Licensing Agent), and Duncan Craig (Applicant's Counsel)

**Introduction from the Licensing Officer**

91.2 The Licensing Officer stated the following:

- This hearing was for a New Premises Licence for International Food & Wine, 17 Preston Road, Brighton for alcohol sales off the premises every day 8am – 3am. The premises was situated in Preston Park ward, just outside St Peters & North Laine ward and Special Stress Area.
- There was an existing premises licence which was revoked on 1 December 2017. . The revocation was a result of a review brought by Sussex Police on 6 October 2017. The licence holder at the time of the review (Heydar Pashazade) appealed that decision to the Magistrates Court on 14 December 2017 and on the same day a Transfer and DPS variation was submitted to the Licensing Authority. The Transfer took immediate effect but the DPS variation took some time to accept as there was considerable confusion with Mr Yukselen's personal address which was confirmed by his agent on 15th January 2018.
- The appeal was still pending at the time of the hearing.
- Seven representations were received. They were received from local residents, a local action team, Sussex Police, Trading Standards, The Licensing Authority and Public Health. Representations had concerns relating to the Prevention of Crime and Disorder, the Prevention of Public Nuisance and protection of children from harm and public safety.
- This premises did not fall within the cumulative impact area or the special stress area. It fell in the 'Other Areas' category of the matrix and as such the matrix would allow a licence for off sales until 11pm (or earlier if considered a densely residential area) but it is important for the Panel to also take in to account the notes that accompany the Matrix, particularly that each application will be given individual consideration on its own merits.

**Questions to the Licensing Officer**

91.3 Councillor Deane asked how confident the Licensing Officer was that the home address Mr Yukselen had given was permanent.

- 91.4 The Licensing Officer responded that that was the address which the Applicant's Agent had confirmed.
- 91.5 In response to Councillor O'Quinn, the Licensing Officer responded that the shop floor plan which had been submitted was presented in full and he was not aware of any changes.

### **Representation from Sussex Police**

- 91.6 Mr Savill introduced on behalf of Sussex Police:
- The Police suspected that the application being considered by the Panel was a means to circumvent the revocation and appeals process of the previous licence. The Police were not satisfied that there was a clear break between the previous entity and the current one.
  - The application was not in line with the Licensing Objectives. The hours of trading were substantially longer than was recommended by the Licensing Matrix. The premises was in a residential area which would suggest a further shortening of hours.
  - There had been several breaches of the conditions to the existing licence by the Applicant including operating without functioning CCTV in December 2017.

### **Questions to Sussex Police**

- 91.7 Mr Craig stated that there had been a test purchase in February 2018 and asked the Police to confirm the outcome.
- 91.8 Ms Staplehurst confirmed that the premises had passed the test purchase.
- 91.9 Councillor Simson asked if the premises had closed when the Applicant had been made aware that the CCTV system was malfunctioning.
- 91.10 Ms Staplehurst responded that the premises did not close while she was present.
- 91.11 Mr Craig asked Sussex Police if they had any substantial evidence that showed that there was not a clean break between the previous and current operators.
- 91.12 Mr Savill pointed to the statement in the additional paperwork provided by the Applicant which stated that he would abandon the appeal against the revocation of the existing licence which had been lodged by the previous operators. It was his opinion that only the original appellant or someone acting on their behalf could do this.
- 91.13 Mr Craig stated that he believed that as the Applicant was now operating the premises it was within his power to proceed with the appeal or not.
- 91.14 Councillor Simson ask the Police to confirm what time of day the test purchase in February had been carried out.

91.15 Ms Staplehurst stated the purchase was carried out between 7:41 – 7:51 pm.

### **Representation from Trading Standards**

91.16 Ms Macbeth stated on behalf of Trading Standards:

- The premises had strong links with illicit alcohol and tobacco.
- Selin Limited of which the Applicant was the sole shareholder and director was only incorporated after the existing licence had been revoked.
- Trading Standards was not convinced of a break between the previous and current operators and were concerned that the illicit activity which had previously occurred was still occurring.

### **Questions to Trading Standards**

91.17 In response to Councillor Simson, Trading Standards stated that the absence of a completed licence transfer document suggested that the business had not been transferred. This suggested that there was no clean break.

### **Representations from the Licensing Authority**

91.18 Ms Lynsdale stated on behalf of the Licensing Authority:

- Following an inspection which resulted in a warning letter Mr Yukselen and the shop manager attended an Age Restricted Sales training course. Ms Lynsdale was not convinced that the My Yukselen had understood the training. She also suspected that it was likely that the two attendees had copied each other's answers on the test after the training. She found this concerning as My Yukselen had a personal licence for which he would have had to have taken a written exam in English.
- The application was for off sales of alcohol between 8am and 3am every day. The Matrix model in the Statement of Licensing Policy gave a terminal time of 11pm for off sale licences in areas described as 'other areas'. The Matrix model also stated that an early terminal time may be required where the premises is in a densely residential area.
- Ms Lynsdale noted that the conditions offered on the application were a word-for-word copy of the conditions attached to the revoked premises licence.
- Ms Lynsdale stated that the Licensing Authority had no confidence that the Applicant would be able to run a business in a way which upheld the Licensing Objectives.

### **Questions to the Licensing Authority**

91.18 Ms Macbeth asked the Licensing Authority how many addresses they had received for Mr Yukselen and if they had seen any completed tenancy agreements.

91.19 Ms Lynsdale responded that the first address Mr Yukselen had provided was another shop in Brighton. When Ms Lynsdale visited and confirmed that he was not staying there, he stated that he was waiting for accommodation. My Yukselenthen provided a new address which was the same one confirmed by his Agent. This was another shop in

Brighton which did have a flat above it but the Licensing Authority had not fully established that there was a residence there.

### **Representation from the Applicant**

91.20 Mr Craig stated on behalf of the Applicant:

- The Applicant offered additional conditions to the operating schedule; to vary challenge 21 policy to challenge 25, to restrict the sale of beer and cider to 5% abv, no sale of single cans, BCRP Membership and alcohol displays not located by the entrance/ exit points.
- The previous owner had made the decision to move on from the business after the licence had been revoked. The Applicant had taken over the business after being contacted by an intermediary. The transfer of the business had not been completed because the sale was subject to a Premises Licence being secured. A stock valuation had taken place and if the new Licence was granted or the appeal was successful the sale would take place.
- Mr Yukselen had previously lived in Brighton & Hove for seven years and had been the Designated Premises Supervisor at Millner Wines in Brighton.
- The Applicant had registered the business in order to run it properly and lawfully since he took over operation in December 2017. The accounts were registered to Selin Ltd of which the Applicant was the sole Director.
- If the new Premises Licence was granted Selin Limited would abandon the appeal for the revoked licence and Mr Yukselen would resign as the DPS
- Mr Yukselen had a 6 month tenancy agreement at his current residence.
- There had been teething issues when the Applicant took over the premises but steps had been taken to understand the conditions of the Premises Licence. This was demonstrated by the three test purchases done by Serve Legal and the Police test purchased all of which the premises passed.

### **Questions to the Applicant**

91.21 Councillor Simson asked why the same licensing agency and the same counsel had been employed by the previous DPS and the Applicant as it seemed to suggest a connection.

91.22 Mr Craig stated that he got 15-20 instructions from NARTS a year and that he frequently dealt with separate applications for the same premises.

91.22 Mr Kilic stated that NARTS represented a large proportion of Turkish speaking individuals who were applying for Licences. NARTS was not involved with the transfer of the business only the Licence application.

91.23 Councillor Simson asked the Applicant to confirm who had arranged the stock taking.

- 91.24 Mr Yukselen stated that he was present when the stock valuation took place along with the brothers of the previous Licence holder Mr Ishmael and Mr Kimal.
- 91.25 Councillor Simson asked who signed as the vendor on the stock valuation.
- 91.26 Mr Yukselen stated that Mr Ishmael signed the stock valuations the owner of the premises.
- 91.27 In response to Councillor Simson, Mr Kilic stated that the sublease had not been completed as the sale was conditional on a Premises Licence.
- 91.28 Councillor Simson asked if there was any documentation which showed Selin ltd as the owner of the premises.
- 91.29 Mr Kilic stated that NARTS had put the paperwork together. Mr Yukselen stated that he had a signed copy at his house.
- 91.30 Councillor Simson asked if the Applicant had been aware that the existing Premises Licence had been revoked and of the ongoing appeal, and what consideration the Applicant had given to it.
- 91.31 Mr Yukselen stated that he had been aware of the appeal and that if the appeal was unsuccessful and no new Licence was approved he would walk away from the purchase.
- 91.32 Councillor Simson asked why My Yukselen had formed a limited company and why this limited company had been registered as a licensed restaurant.
- 91.33 Mr Craig stated that registering a limited company to purchase a small business was a fairly standard practice. Mr Yukselen stated he was unaware that his accountant had registered Selin ltd as a licensed restaurant.
- 91.34 Councillor Simson asked why the operating schedule was identical to the revoked licence and if the Applicant had not considered additional conditions given the previous application had been revoked.
- 91.35 Mr Kilic stated that the Applicant had offered additional conditions in the representation.
- 91.36 In response to Councillor Simson, Mr Yukselen stated that he had not been aware of the Licensing Objectives when he made the application but he was now aware of them.
- 91.37 In response to Councillor Simson, Mr Yukselen stated that he would not accept reduced opening hours as a condition.
- 91.38 In response to Councillor Deane, Mr Kilic confirmed that everything labelled 'shelf' on the shop plan was non-alcoholic.

91.39 Councillor Deane noted the objections received from local residents and asked Sussex Police what they would suggest as an acceptable closing time.

91.40 Ms Staplehurst stated that the matrix suggested 11pm would be the latest but as the premises was in a residential area the Panel may wish to set an earlier close. Similar licences in the area could serve as a guide.

91.40 In response to Mr Savill, Mr Yukselen stated:

- He had not had any input into the application before it was submitted by NARTS including not having read the licensing application or operating schedule before they were submitted.
- He had become involved in the premises when a friend had told him about the opportunity and was aware the licence had been revoked
- He confirmed he had not seen the licence transfer before it was submitted and did not know what conditions were on the licence.
- He had had no contact with the previous DPS Mr Pashazade.
- He had not consulted with Sussex Police before making the application.

91.41 In response to Ms Macbeth and Ms Lynsdale, Mr Yukselen stated:

- He had previously managed two other licensed premises in Brighton & Hove.
- He was planning to purchase half the shares for his brothers shop but would not be working there.
- He was in the shop from 10am-5pm. Another employee was in the shop from 5pm-3am and the wife of the other employee worked from 7pm-11pm as well.
- He had completed the licensing authority's training but as he struggled with written English the employee he had taken the training with completed his test for him.
- He had not yet made any payments towards rent or the existing stock and would only do so after taking full control of the property. If the licence was not granted he would not take over the property and would not make any payments.
- He could not remember if he had taken the exam for his personal licence in Turkish or English

91.42 Mr Kilic confirmed that the applicant had taken additional training through NARTS app which was in Turkish.

### **Summaries**

91.43 The Licensing Officer summarised and highlighted the following:

- The hearing was for a New Premises Licence for International Food & Wine, 17 Preston Road, Brighton for alcohol sales off the premises every day 8am – 3am. The Panel have heard from all the parties present and seen all the paperwork. Any changes to conditions or hours should have been proffered to the parties present.
- The Applicant had offered additional conditions of to vary challenge 21 policy to challenge 25, to restrict the sale of beer and cider to 5% abv, no sale of single cans, BRCP Membership and alcohol displays not located by the entrance/ exit points.

- Licensing Guidance states that: In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:
  - the steps that are appropriate to promote the licensing objectives;
  - the representations (including supporting information) presented by all the parties;
  - the Guidance;
  - its own statement of licensing policy

91.44 Mr Savill summarised and highlighted:

- Selin Ltd was incorporated when the decision letter was issued and the licence transfer had been submitted several days after.
- The application had been made in haste and the Applicant's sole director had not seen the application, was not aware of the conditions, operating schedule or licensing policy.
- Sussex Police did not accept that the breaches of the conditions were minor in their nature or number.
- The Applicant had no ties to the lease and no money had exchanged hands. Selin Ltd may be just a convenient name to make a new application under.
- Should the licence be granted Sussex Police would recommend that the terminal hour be brought forward significantly from 3am.

91.45 Ms Macbeth summarised and highlighted:

- It had emerged that the business was transient as the applicant had no long term ties to the business.
- The applicant has previous experience and it seemed convenient that he had been brought into the picture after the previous licence had been revoked.
- Trading Standards had no confidence that there was a clear break between the previous entity and the applicant.

91.46 Ms Lynsdale summarised and stated that she had no confidence that the applicant would run the business in a way which upheld the licensing objectives and recommended that the Panel refuse the application.

91.47 Mr Craig summarised and highlighted:

- The security of the tenure was not a relevant factor for the Panel. The Panel had to consider whether granting the application would promote the licensing objectives.
- The Applicant was committed to the business and had moved from London to Brighton.
- The additional conditions which had been offered addressed the issues which had been raised by the Responsible Authorities at the hearing.
- Any breaches of the previous licence's conditions had occurred early in the Applicant's tenure and there was evidence that the conditions were now being upheld.
- There was no evidence that the Applicant was associated with the previous operators besides speculation. The Panel cannot take speculation into account in their decision making process.

## **Decision**



91.48 The Panel's decision was sent to all parties:

"The panel has read the report of the Executive Director of Neighbourhoods, Communities and Housing, and the additional papers circulated on behalf of the applicant, Selin Limited. It has also listened carefully to all the points and submissions made. In reaching its decision, it has had due regard to the Council's Statement of Licensing Policy (SOLP) and section 182 guidance.

The application is for a new premises licence for International Food and Wine at 17 Preston Road, Brighton, authorising the supply of alcohol off the premises every day between 8 am to 3 am the following day.

Representations were received from Sussex Police, the Licensing Authority, Trading Standards, Public Health, local residents and a Local Action Team. The representations raised all four licensing objectives – the prevention of public nuisance, prevention of crime and disorder, public nuisance and the protection of children from harm.

Although the application is made by a company, that company has only one director, the current DPS, Baris Yukselen. The panel has therefore treated the acts of Mr Yukselen as those of the applicant company. Mr Yukselen has held a personal licence since 2011 and has been involved in licensed premises since that date, in particular as the DPS of an off licence in Coombe Terrace from February 2013 to October 2015. He became the DPS of the current premises on 14 December 2017, and his company the Premises Licence Holder on the same date. The panel is concerned that notwithstanding his previous experience, Mr Yukselen admitted that he had had no awareness of the council's SOLP, had not been aware of the conditions imposed on the old premises licence when he took over, and had not seen the new application before it was submitted.

Since Mr Yukselen became the DPS for the premises, there have been breaches of the licence conditions. On 21 December 2017, the Police identified that the CCTV was not working. This breach of the licence was not challenged.

On 3 January 2018, Donna Lynsdale of the council's Regulatory Services attended the premises. At that visit Mr Yukselen admitted that certain conditions of the existing licence relating to the protection of children from harm were not being adhered to. In particular he admitted that no external agency had been engaged to conduct training or test purchases. He also queried the need for this condition – "After 7pm young children (under 16) will be allowed on the premises only if accompanied by an adult", thereby demonstrating a lack of understanding of the prevention of children from harm licensing objective. Additionally, at that visit, Mr Yukselen was not aware of the condition which required a minimum of two members of staff to be on duty at the premises between the hours of 19.00 and 23.00. The Panel were not persuaded by representations on his behalf that he had not been made aware of the licence conditions until 17 January 2018 when formal notification of the transfer of the Premises Licence was issued by the Licensing Authority. The conditions attaching to licensed premises are readily available from the Public Register on the council's website.

The premises are not located in either the Cumulative Impact Zone (CIZ) or the Special Stress Area (SSA), so the application falls to be determined on its own merits in accordance with the SOLP. The panel accept the Police's description of the location of the premises – a parade of shops, densely residentially populated with flats and other dwellings. The matrix approach to licensable activities provides for a terminal hour for off-licences of 23.00 in non-CIZ/SSA areas, although within densely residential areas, that could be earlier. The application did not demonstrate any regard to SOLP matrix, and did not include information which could constitute exceptional circumstances allowing for a departure from the matrix. Residents' representations about anti-social behaviour and noise associated with the premises were noted. At the hearing, the panel canvassed an earlier terminal hour, but the applicant made it clear that it was 3 am or nothing.

In determining the application, the panel is statutorily required, after having regard to the representations, to take such steps as it considers appropriate for the promotion of the licensing objectives. Taking into account the breaches of the licensing conditions referred to above, Mr Yukselen's ignorance of/disregard for the licensing conditions attached to the premises licence and his lack of understanding of the licensing regime, the panel has no confidence in the applicant company's ability to promote the licensing objectives. It shares the concerns of the Police, Licensing Authority and Trading Standards. The application is therefore refused."

The meeting concluded at 13:30

Signed

Chairman

Dated this

day of