

Meeting of the Licensing Act 2003 Sub-Committee
 held at the Town Hall, Peterborough on Thursday 12 July 2012

RECORD OF PROCEEDINGS

1. Apologies for Absence	There were no apologies for absence received.
2. Declarations of Interest	There were no declarations of interest.
3. Application	New Premises Licence – 77 Mayors Walk, Peterborough, PE3 6EX
3.1 Application Reference	064340
3.2 Sub-Committee Members	Councillor Thacker (Chairman) Councillor Peach Councillor Saltmarsh
3.3 Officers	Terri Martin, Regulatory Officer – Licensing Colin Miles, Lawyer – Legal Advisor to the Sub-Committee Gemma George, Senior Governance Officer – Clerk to the Sub-Committee
3.4 Applicant	Mrs Evelina Balzakeviciene
3.5 Nature of Application	<p><u>Application Type</u></p> <p>Application for a new premises licence.</p> <p><u>Authorisations and Times Applied For</u></p> <ul style="list-style-type: none"> • Sale of alcohol for consumption off the premises Monday to Sunday 09.00 to 22.00 • Hours premises are open to the public Monday to Sunday 09.00 to 22.00 <p><u>Summary of New Premises Licence Application</u></p> <p>The application had been submitted online via the Electronic Licensing Management System (ELMS). The application had then been forwarded onto the required Responsible Authorities by the Licensing Department in accordance with the regulations and Section 8.24 of Guidance.</p> <p>Representations had been received from a local Councillor and a local resident as Other Persons. A summary of issues raised by these Other Persons included:</p> <ul style="list-style-type: none"> • The potential increase of existing alcohol related incidents and anti social behaviour in the area;

	<ul style="list-style-type: none"> • The history of illegal activity at the premises; • The number of premises in the vicinity selling alcohol; and • The appropriateness of the application due to its locality with schools, residents and the church next to the premises. <p>Representations had also been received from Cambridgeshire Constabulary, Trading Standards, and the Licensing Authority as Responsible Authorities. A summary of issues raised by the Responsible Authorities included:</p> <ul style="list-style-type: none"> • The history of problems at the premises including the three HMRC seizures of illicit goods during May 2010, April 2011 and May 2012, and the failure of a test purchase during June 2011; • The established link with the prior owner and the staff of the new applicant; • The ambiguity over ownership, responsibility and control of the business; and • The concerns over the Applicant's ability to be able to uphold the licensing objectives. <p>A letter had also been received from the Director of Public Health which provided observations regarding the locality and the condition within the application in relation to the 'Protection of Children from Harm' objective.</p> <p>The Applicant's proposed conditions under the licensing objectives were detailed within the application and were outlined within the Sub-Committee report. In accordance with Section 10.9 and 10.11 of the Guidance, these conditions had been interpreted into enforceable conditions and only those appropriate and proportionate for the promotion of the licensing objectives had been included in the Operating Schedule.</p>
3.6 Licensing Objective(s) under which representations were made	<ol style="list-style-type: none"> 1. The Prevention of Crime and Disorder 2. The Protection of Children from Harm 2. The Promotion of Public Safety
3.7 Parties/Representatives and witnesses present	<p><u>Applicant / Applicant's Representative</u></p> <p>Mr David Povilonis, the Applicant's Agent, who was present on behalf of the Applicant.</p> <p><u>Responsible Authorities</u></p> <p>Mrs Karen Woods, who presented the case on behalf of Peterborough City Council Trading Standards.</p> <p>Mr Adrian Day, who presented the case on behalf of the Licensing Authority.</p> <p>Sgt. Paul Saunders, who presented the case on behalf of Cambridgeshire Constabulary. PCSO Constanti was also in attendance; however he did not wish to speak.</p>
3.8 Pre-hearing considerations and any decisions taken by	There were no pre-hearing considerations or decisions taken by the Sub-Committee relating to ancillary matters.

the Sub-Committee relating to ancillary matters	
3.9 Oral representations	<p>The Regulatory Officer addressed the Sub-Committee and outlined the main points with regards to the application.</p> <p><u>Applicant / Applicant's Representative</u></p> <p>Mr David Povilonis addressed the Sub-Committee on behalf of the Applicant, who was not present at the hearing. The key points raised during his address and following questions from the Sub-Committee and the Responsible Authorities, were as follows:</p> <ul style="list-style-type: none"> • The previous owner and the current owner were in no way connected; • The previous owner and the current owner may know of each other, but they were not friends; • Mr Povilonis was not aware that Mr Tomas Balzaravicius had been connected directly with the business previously. <p>Prior to the Responsible Authorities addressing the Sub-Committee, the Regulatory Officer advised that there had been issues with identifying who the business operator actually was and the previous licence had been surrendered on 28 July 2011.</p> <p><u>Responsible Authorities – Trading Standards</u></p> <p>Mrs Karen Woods addressed the Sub-Committee and provided an overview of the objections raised to the application by Trading Standards. The key points raised were as follows:</p> <ul style="list-style-type: none"> • Mr Tomas Balzaravicius and Mr Audrius Stalioraitis had been joint owners of the premises in the past and both of their names had been listed on a Food Registration Form; • Miss Aurika Zukauskiene had been registered as the Designated Premises Supervisor (DPS) and the Premises Licence Holder; • Following a review application served by Trading Standards on 29 June 2011 the licence had been surrendered; • Mrs Evelina Balzakeviciene was not known to Trading Standards prior to the current application; • Historically, there had been three seizures of illicit goods undertaken at the premises; • Mr Audrius Stalioraitis had stated that the business had been under 50/50 control between himself and Mr Tomas Balzaravicius; • Both of the gentlemen had previously been interviewed under caution; • There was a signed officer witness statement which identified that Mr Tomas Balzaravicius had been on the premises during an officer's visit; • A food inspection had been carried out at the premises previously and Environmental Health had stated that Mr Tomas Balzaravicius was involved with the premises. Mr Balzaravicius had denied this; • Mr Tomas Balzaravicius had taken over full control of the premises on 1 July 2012, however there was no official paperwork trail to

support this;

- The premises would have to be registered with Environmental Health as a food store. The premises name had changed to 'Adam's Fresh Meat';
- The question of ownership and responsibility for the premises was confusing and it could not be categorically specified.

Mr Adrian Day addressed the Sub-Committee and provided an overview of the objections raised to the application by the Licensing Authority. The key points raised were as follows:

- Crimes had previously been committed on the premises and the same people involved with those crimes were suspected of being involved with the premises at the current time;
- No documents highlighting the transfer or sale of the premises had been produced. This could be construed as being either obstructive or as showing a lack of business acumen;
- The Applicant should be demonstrating that they were aware of business procedures and protocols;
- How much involvement would Mrs Evelina Balzakeviciene really have with the premises;
- The stated conditions, particularly those in relation to the 'Protection of Children from Harm' objective, demonstrated a lack of understanding of the objectives purpose;
- The application form did not appear as if it had been completed with the Applicant's input.

Sgt. Paul Sanders addressed the Sub-Committee and provided an overview of the objections raised to the application by Cambridgeshire Constabulary. The key points raised were as follows:

- The premises was known to the Police and there had been a number of issues in the past;
- The Police had visited the premises on 22 May 2012 and Mr Audrius Stalioraitis had stated that the business had been under 50/50 control between himself and the Applicant until the middle of June 2012 after which time he would hand over full control of the business to the Applicant;
- During the visit undertaken on 22 May 2012, a number of food items were found to be out of date;
- Mr Stalioraitis had mentioned that the Applicant was a friend;
- It had been identified that a Food Registration Form dated October 2010 had the business operators listed as both Mr Audrius Stalioraitis and Mr Tomas Balzaravicius;
- Mr Tomas Balzaravicius had been present at an interview at the store when the Police had attending with the Regulatory Officer and he had stated that he would be working in the store;
- Cambridgeshire Constabulary had made representation against the application on the grounds of 'Crime and Disorder' and 'Public Safety';
- The way the application had been filled in had demonstrated that selling alcohol was just a means to make money.

The Sub-Committee and the Responsible Authorities questioned Mr David

	<p>Povilonis on a number of issues and responses were given as follows:</p> <ul style="list-style-type: none"> • Mr Tomas Balzaravicius was not involved in the application, hence him not being present at the hearing; • Food Shop was a trade name and Mrs Evelina Balzakeviciene was acting as a sole trader. The business had yet to be VAT registered; • The Applicant had input in the completion of the application form; • Mr Audrius Stalioraitis was no longer involved in the business and was not working at the premises; • Mr Povilonis was the accountant for Mr Tomas Balzaravicius and he had known him for five years; • There was no evidence that Mr Tomas Balzaravicius had been involved in the previous business; • If the premises licence was granted, it could be controlled by conditions. <p><u>Summing Up</u></p> <p>All parties were given the opportunity to summarise their submissions and there were no further comments made.</p>
<p>3.10 Written representations and supplementary material taken into consideration</p>	<p><u>Applicant / Applicant’s Representative</u></p> <p>Consideration was given to the application submitted by Mrs Evelina Balzakeviciene. An email had also been submitted by the Applicant’s Representative, Mr David Povilonis stating who the owners of the business were to be.</p> <p><u>Responsible Authorities</u></p> <p>Consideration was given to the following:</p> <ul style="list-style-type: none"> • Statement from Trading Standards as a Responsible Authority; • Statement from the Licensing Authority as a Responsible Authority; and • A letter from Cambridgeshire Constabulary as a Responsible Authority. <p>A written statement had also been submitted from the Director of Public Health.</p> <p><u>Other Persons</u></p> <p>Consideration was given to the following:</p> <ul style="list-style-type: none"> • Email from Councillor Ed Murphy; and • Letter from a local resident.
<p>3.11 Facts/Issues in dispute</p>	<p><u>Issue 1</u></p> <p>Whether the granting of a new premises licence application would be detrimental to the ‘Prevention of Crime and Disorder’ Licensing Objective.</p> <p><u>Issue 2</u></p>

	<p>Whether the granting of a new premises licence application would be detrimental to the 'Prevention of Public Nuisance' Licensing Objective.</p> <p><u>Issue 3</u></p> <p>Whether the granting of a new premises licence application would be detrimental to the 'Protection of Children from Harm' Licensing Objective.</p>
4. Decision	<p>The Sub-Committee listened to all the evidence put before it and also took into account the contents of the application and all representations and submissions made in relation to it. The Sub-Committee found as follows:-</p> <ul style="list-style-type: none"> • There had been recent history that illegal sales of tobacco and alcohol had taken place; • There had been a recent failed test purchase at the premises; • The Sub-Committee was not satisfied that the 'controlling mind' behind the business could be identified; • The business was not, and had not been, operated responsibly; • More weight had been attached to those submissions made by the Responsible Authorities and Other Persons than to those submitted by the Applicant; • The Sub-Committee believed that Mr Tomas Balzaravicius had had control of, or influence in, the business prior to June or July 2012. <p><u>Decision</u></p> <p>The decision of the Sub-Committee was therefore not to grant the premises licence.</p> <p>In making its determination, the Sub-Committee had regard to the fact that the Applicant had not been present at the hearing and this had placed the Applicant's Representative in a difficult position.</p> <p>Having the benefit of a premises licence meant that there were certain responsibilities that came with that licence. The Sub-Committee remained unconvinced that the Applicant would be able to run the business as a licensed premises and therefore the granting of a licence would not have been appropriate for the promotion of the three Licensing Objectives, those being 'the Prevention of Crime and Disorder' 'the Prevention of Public Nuisance' and the 'Protection of Children from Harm'.</p> <p>The decision was suspended for 21 days to allow for appeal to the Magistrate's Court.</p>

Chairman
13.30pm – 15.05pm