

**LICENSING SUBCOMMITTEE  
(2003 ACT)**

10 November 2008  
10am – 12.05pm

**Present:** Councillors Rosenstiel (Chair), Smith and Wright

**08/lic/49 Minutes**

The minutes of the meeting on 11 August were confirmed as a correct record and signed by the Chair.

**08/lic/50 Declarations of Interest**

Councillor Rosenstiel declared a personal interest as a member of the Campaign for Real Ale.

**08/lic/51 Procedure to be Followed**

The procedure for hearings of the subcommittee set out on the agenda was noted.

**08/lic/52 Application to vary a Premises Licence to specify an individual as Designated Premises Supervisor: Mrs Daksha Brahmhatt at Mace Stores, 78-80 Mill Road, Cambridge**

**Present for this application:**

**For the Applicant:** Ajike Ososanya, Fairfields Solicitors, Daksha Brahmhatt (Applicant) and her son, Martin Evans (local resident) as witness to the good character of the applicant.

**Responsible Authorities:** Sergeant Simon Cross and PC Peter Sinclair for Cambridgeshire Constabulary.

**Interested Parties:** Not applicable.

**The hearing:**

The Licensing Officer presented her report and outlined the application being made. She said that she had received an email the previous Friday from Mr Inamdar stating that he had made an error in his letter of 2 October 2008, as the date when he ceased being DPS was 2007 and not 1997. The letter could be tabled with the agreement of all parties. She had also received a form from Fairfields Solicitors saying that the hearing was unnecessary because the objection was frivolous. She clarified that, as the objection had been made by a Responsible Authority she was required to convene a hearing.

Sergeant Cross presented the police case and reminded members that to object the police had to show there were "exceptional circumstances" and he said that there were. He began by highlighting the alcohol-related problems in Mill Road – especially street drinking, drunkenness and Anti-Social Behaviour. The police would treat the email from Mr Inamdar at face value. The applicant had a duty to inform the Licensing Officer about the lack of a DPS and had not done so. The premises was very small and so it was not possible to be unaware when the DPS was not present. In August 2007, the applicant had been issued with a Penalty Notice for Disorder as she had served a person with alcohol who was drunk. Mr Brahmhatt had also been reported and that had not yet gone to trial but was due in court soon. These two incidents were considered by the police to constitute

exceptional circumstances and he knew of nowhere else in Cambridge where this had happened. The premises was in a Section 30 Dispersal area which gave the police powers to disperse groups of two or more persons and forbid them to return to the area within 24 hours. In the police view this was not a frivolous objection. As well as a public duty under the Licensing Act, the Human Rights Act required them to act proportionately which he believed they were.

Members of the Sub-Committee asked questions of clarification of the police to which they responded (A):

- The August 2007 incident was dealt with by a Penalty Notice but the September 2008 one by the Magistrates Court.

A: Yes, because a second offence of a similar kind was regarded as more serious.

Ajike Ososanya then presented the applicant's case. She said that her client denied selling alcohol to a drunk person. Mrs Ososanya said that her client had not been brought face to face with the man she was alleged to have served. The name of the man was not on the Notice. Mrs Brahmbhatt had accepted the Notice because she had no alternative. Mr Brahmbhatt also denied the incident in September 2008. Because the police have no papers about this at this hearing, Mrs Ososanya said that incident should not be considered at this hearing. Mrs Ososanya also said that her client was not aware that Mr Inamdar was no longer the DPS until she received the letter from the Council. He had not informed her client who was very aware of her responsibilities as was her husband. Mrs Ososanya asked the Sub-Committee to grant the application.

With the agreement of all parties, a letter from Mr Evans giving a good character reference for the applicant was tabled and he then spoke to it. The text of the letter reads:

*"I would like to be a character witness for Raja Brahmbhatt. I have known Raja and his wife for 10 years and he is a respected member of the local Mill Road community. He has been an important presence on Mill Road for 18 years.*

*I cannot comment on the current accusation, as I was not there. However, I support strongly the police initiative on Mill Road against drunken behaviour and I have never heard any critical comment about Raja and his sales of alcohol.*

*Since this issue has been raised Raja and his wife have taken action to control their sales of strong alcohol and I support their desire to continue to have a licence to sell alcohol".*

In addition to the points made in the letter, Mr Evans said there were at least 6 premises in Mill Road and that 3 sell strong alcohol. He thought that Mace Stores should not be singled out.

Sergeant Cross responded by saying that the document signed by Mrs Brahmbhatt was a fact. Proportionality of response was also due to the residents of the Mill Road area. The police objection was critical to dealing with the crime and disorder in the area. He asserted again that it was impossible not to know if the DPS was in the premises. The number of outlets in Mill Road had been a factor in the police application for a Cumulative Impact Zone. There was a difference between those who sold alcohol responsibly and those who did not.

Members of the Sub-Committee asked further questions of clarification of the police to which they responded (A):

- If Mrs Brahmhatt is the Licence Holder and Mr Inamdar is not the DPS, is there not a query over the suitability of the Licence Holder?

A: The police were taking things step by step. They needed first to object to the DPS application and then they might also object to Mrs Brahmhatt as Licence Holder.

- How significant was the time chronology?

A: In August 2007, Mr Inamdar was DPS in name but by December 2007 he no longer was in name. So by inference, there was no DPS at the premises between December 2007 and September 2008.

- Would it be possible to see the Penalty Notice.

With the agreement of all parties this was tabled. Having studied the Notice and consulted her client, Mrs Ososanya said that Mrs Brahmhatt had not seen some of the pages of the notice and had not understood what she was being asked to sign. She said that Mrs Brahmhatt was a good person, aware of her responsibilities as Licence Holder and those attached to being DPS. There had been no problems prior to August 2007 and her client had had the premises for many years. Mrs Ososanya also asked the Sub-Committee to disregard Mr Inamdar's letter.

A member of the Sub-Committee pointed out that the Notice did refer to a male called Lee and that Mrs Brahmhatt had signed this document.

In response to questions from members, the police said that they had taken enforcement action against other premises in Mill Road for selling alcohol to underage drinkers but that there had been no other examples in the city of premises selling to drunk persons on more than one occasion. Sergeant Cross said that if he were allowed to bring evidence from members of the public in the local community to show the unsuitability of the applicant to be DPS he would have done so.

A member of the Sub-Committee asked why the police had not asked to review the licence itself.

Sergeant Cross replied that they were not in control of when applications were made and they had had to respond to this one. They might request a review of the licence also.

Before the Sub-Committee retired to consider the application, the Council's solicitor quoted from the legislation with regard to what they needed to consider when deciding whether or not to grant the licence.

Members of the Sub-Committee retired at 11.00am with the Council's solicitor to consider the application. They returned on two occasions so that the following matters could be clarified:

- As Mrs Brahmhatt had signed the Penalty Notice this was accepted in law;
- What were the next steps if they agreed with the police objection.

The second question was more difficult to sort out as the legislation was unclear. The Council's solicitor and Licensing Officer advised the Sub-Committee that if the DPS application was refused, Mrs Brahmhatt had 21 days in which to appeal and that she had to find another person to act as DPS if the appeal was refused.

The Sub-Committee retired again at 11.23am and returned at 12.00pm with a decision.

**The Decision:** In reaching the decision on the application, the Sub-Committee considered the material presented in writing, including documents tabled by the parties by agreement during the meeting, the notice submitted by the Police, the Council's Statement of Licensing Policy and the legislation and statutory guidance under the Licensing Act 2003 and the legal advice received during the hearing.

The Sub Committee decided to reject the application for the following reasons:

1. The Sub Committee did not accept the applicant's assertion that the hearing was unnecessary because it was frivolous (as stated on the LAR1 form).
2. That the acceptance of the Fixed Penalty Notice on 17<sup>th</sup> August 2007 by the applicant proves that the crime and disorder licensing objective was undermined by the applicant.
3. That having undermined the crime and disorder licensing objective amounts to an exceptional circumstance sufficient to refuse the application.
4. That the existence of the drunkenness problem on Mill Road, the fact that Mill Road is located within a Cumulative Impact Area and also within a section 30 Anti Social Behaviour Act 2003 dispersal area amounts to further evidence that there are exceptional circumstances which apply to this application.
5. Having heard the representations from the applicant's representative in respect of the applicant's entitlements under the Human Rights Act 1998, the Sub Committee decided that the decision to reject the application was not disproportionate because the premises licence was not suspended or revoked.

With effect from : 10<sup>th</sup> November 2008

The Meeting concluded at 12.05pm

**Chair**