

## **Licensing Sub-Committee**

Minutes of a Meeting of the Licensing Sub-Committee held in the Committee Room 1 (Fougères Room), Civic Centre, Tannery Lane, Ashford on the **29<sup>th</sup> March 2011**.

### **Present:**

Cllr. Feacey (Chairman);

Cllrs. Holland, Woodford.

### **Apologies:**

Cllr. Hodgkinson.

Mrs Butler – Environmental Control.

### **Also Present:**

Licensing Support Officer, Legal Advisor, Member Services & Scrutiny Support Officer.

Cllr. Wells – Interested Party.

Mr Mitchener – Applicant's Representative.

## **434 Election of Chairman**

### **Resolved:**

**That Councillor Feacey be elected as Chairman for this Meeting of the Licensing Sub-Committee.**

## **435 Minutes**

### **Resolved:**

**That the Minutes of the Meeting of this Sub-Committee held on the 22<sup>nd</sup> March 2011 be approved and confirmed as a correct record.**

## **436 Murco Costcutter, Brookfield Road Service Station, Brookfield Road, Ashford, Kent, TN23 4ES – Application from an existing licence holder to vary the premises licence.**

The Chairman opened the meeting and welcomed all those present. Members confirmed that they had read the papers relating to the application. The Chairman explained the procedure to be followed at the meeting.

The Licensing Support Officer then gave a brief summary of her report. The application had been made by an existing licence holder to vary the premises licence. The application to vary the Premises Licence was contained in Appendix A of the agenda papers. The application had been made in the proper manner. Representations had been received hence the determination coming before Members.

The current licence permitted the off sales of alcohol Sunday 10:00 – 22:30 and Monday to Saturday 08:00 – 23:00, with restrictions on Christmas Day and Good Friday as a result of the conversion of embedded conditions. The variation application requested the addition of late night refreshment from 23:00 – 05:00, seven days a week and an increase in the hours for the sale of alcohol to 24 hours a day, seven days a week. The applicant stated within Section P of the application form the additional steps they intended to take in order to promote the four licensing objectives if the proposed variation was granted. The conditions put forward by the Licensing Manager as taken from Section P of the application form were as given within Appendix E. It was the responsibility of the Licensing Authority to prepare conditions that were “consistent” with the operating schedule (s.18).

A representation was received from the Environmental Control Officer. The Environmental Control Officer was concerned about the applicant being able to successfully promote the prevention of public nuisance objective. This was in respect of the amount of noise likely to be generated by car doors slamming, vehicle movement and revving of engines. The representation also detailed the fact that planning permission was refused for the premises to operate after 23:00. Members were advised that whether planning permission had been granted was not relevant to decisions made under the Licensing Act 2003. The decision could only be made solely on the four licensing objectives.

A representation was received from one of the Ward Members. The representation concerned the prevention of public nuisance in relation to the residential nature of the area and disturbances from licensed premises in the area. The email also raised concern regarding the protection of children from harm in relation to the ease of access to alcohol. Under section 35(5) of the Licensing Act 2003, representations were relevant if they were about the likely effect of the grant of the licence on the promotion of the licensing objectives and (subsection 6) were made by an interested party or responsible authority within the prescribed period, were not withdrawn or, in the opinion of the licensing authority, frivolous or vexatious.

Mr Mitchener, the applicant’s representative, addressed the Sub-Committee. He advised all those present that he was the licensing agent for the applicant and had acted for them for a number of years, he had authorisation to agree to conditions to the licence. The application was for a variation of the current licence to permit the sale of alcohol twenty four hours a day, seven days a week, the provision of late night refreshments and the removal of embedded conditions. There had been no complaints or incidents since the premises had held a licence.

The site had been trading twenty four hours a day since July 2010 following on from a trial opening twenty four hours a day on Thursdays, Fridays and Saturdays since

April 2010. There had been no objections or complaints received in relation to the premises operating twenty four hours a day.

He wanted to address the representations made by the Ward Member and the Environmental Control Officer. The Ward Member had suggested that the area was mainly residential and that permitting the application would contribute to issues currently experienced in the area. The premises were located next to a 'shopping area' which consisted of a parade of shops, including a Co-op, pharmacy, hairdressers and newsagent.

He refuted the claim that permitting the licence would increase access to alcohol for young people. There had been no issues relating to underage selling and he drew attention to the leaflet that had been distributed prior to the meeting entitled 'Dealing with Confrontation – Saying NO to Underage Drinkers'. All employees had to undertake a specialised training regime. Employees would not serve alcohol to anyone under the age of 21 without valid identification. The tills were set up to assist with confirmation of age, they would alert staff that valid identification was required and provide the date after which an individual would be able to purchase alcohol legally. The training regime was BII and Trading Standards approved. Each employee would be required to undertake training and pass a written test prior to being permitted to sell alcohol with compulsory refresher training every six months. Discussions had taken place with the Police Licensing Officer who had raised no objection to the application.

The reference to planning permission having been refused for the application was not relevant to the determination of the application or the four licensing objectives. When the premises were first constructed there was not a restriction on hours of operation placed on the site. However the site was then redeveloped with a limitation on the hours of operation placed upon it, this was under dispute and the site was operating twenty four hours a day, seven days a week.

He concluded by saying that guidance was clear that an application could not be refused on the basis of the fear of what could happen in the future. The applicant was aware of their social responsibility and held a refusals log on site and the premises were monitored by CCTV.

In response to questions from the Sub-Committee, Mr Mitchener advised that the site was operating twenty four hours a day, seven days a week and had been since July 2010. Advice had been taken by the Applicant in relation to the issue surrounding planning permission and had been advised that they could continue to operate whilst the issue was in dispute. It would be difficult to enforce the restriction placed upon the premises by the planning permission. This was, however, a separate issue to the licensing application and should not influence the Sub-Committee's decision.

A new employee would be unable to work at the premises until they had completed the training programme and passed a written test. Two members of staff were on site until 12.30am, after this time one member of staff was present. There were a number of safety measures in place including a shunt lock to enable staff to lock the premises from the till area to prevent someone from entering the shop.

Councillor Wells, one of the Ward Members, addressed the Sub-Committee. He advised that he had raised objection to the application on behalf of a number of residents. The site was located within a predominantly residential area and noise from car doors caused a disturbance at night. The residents had put up with a lot of disturbance and noise in recent years and felt that their quality of life had diminished. A particular resident who lived in sheltered housing opposite the site regularly had her sleep disturbed by late night noise and was concerned about this application and the potential increase in noise that could result.

When the premises had originally opened there had only been a workshop that sold spare parts. It was only in recent years that a shop had been attached to the site. When the Co-op had applied for a licence the Crusader Public House had challenged the application, he was surprised that this had not happened in respect of this application. The Planning Department had gone to considerable lengths to restrict the hours of the Kebab House and the Co-op and he wondered if permitting this application would open the flood gates for these premises to request to open all night.

There were issues with underage drinking in the area; the Police and Neighbourhood Watch were both aware of this. There had been instances whereby adults were purchasing alcohol for those who were underage. This was noticeable in two areas where there were cans littering alleyways, it had been noted that the cans were ones that had only been on sale at the Murco Costcutter at the time.

Mr Mitchener responded by stating that the road that the premises was on was a busy main road. Twenty years ago there had been 25,000 forecourts in England, now there were only 9,000. The profit margin on fuel was three pence which was down from five pence five years ago. The majority of forecourts that had shops were licensed; if the site did not have a shop then it would not exist. Petrol stations were closing regularly and 35 to 40% of fuel was being sold by hypermarkets. If an individual was found to be supplying minors with alcohol then they would be banned from the premises. In his opinion there was nothing to support outright refusal of the application, if there were difficulties in the future they could be dealt with by a Review.

In response to questions Mr Mitchener advised that there had never been any suggestion that underage sales had taken place at the premises. The applicant was not informed if test purchases had taken place, the only time they would be alerted would be when the premises had failed such a check. There was no evidence to suggest a link between the sale of fuel and alcohol at forecourts.

The Licensing Support Officer then summed up the nature of the application and the issues for the Sub-Committee to consider. She reminded the Sub-Committee that they may grant the licence with no modifications, modify the conditions of the licence or reject whole or part of the application.

The Sub-Committee then retired to make their decision.

Upon return there was considerable discussion regarding the imposition of a condition to restrict the location of alcohol other than spirits to be within sight of the cashier.

The Sub-Committee then retired to make their decision.

On return the Legal Advisor read out the decision.

**Resolved:**

**That the variation to the premises licence be granted and the sale of alcohol be permitted from:**

**Monday to Sunday: 00:00 to 00:00**

**Late Night Refreshment:**

**Monday to Sunday: 23:00 to 05:00**

**Subject to the conditions consistent with the operating schedule set out in Appendix E of the Licensing Manager's report, and the following additional conditions:**

- (i) The Licence Holder shall display prominent, clear notices at the exit, requesting customers to respect the needs of local residents and leave the premises and the area quietly.**
- (ii) The License Holder shall receive and respond to complaints.**
- (iii) The Licence Holder will liaise with the Police and other relevant authorities in connection with the operation of the licence and the prevention of crime & disorder licensing objective.**
- (iv) The Licence Holder will ensure that all spirits are located behind the counter; all other alcohol will be covered by CCTV equipment at all times.**

**The Licensing Manager be given delegated authority to amend the wording of the conditions as appropriate.**

The Legal Advisor informed those present of their right of appeal to the Magistrates' Court and the Right to Review a Premises Licence.