

CHILTERN DISTRICT COUNCIL

MINUTES of the Hearing of the LICENSING SUB COMMITTEE (CDC)

held on **15 AUGUST 2017**

PRESENT: Councillors: J J Rush - Chairman
M Flys
M J Harrold
J J Rush

6 DECLARATIONS OF INTEREST

There were no declarations of interest.

All parties indicated that they had no objections to the membership of the Sub Committee.

7 APPLICATION FOR A VARIATION TO A PREMISES LICENCE AT SHELL AMERSHAM FILLING STATION, 40 - 42 WOODSIDE ROAD, AMERSHAM, HP6 6AJ

Members were requested to consider an application for a further variation to the Premises Licence, in respect of which relevant representations had been received. The application had been submitted by Motor Fuel Limited ("the applicant") in respect of Shell Amersham Filling Station, 40 – 42 Woodside Road, Amersham HP6 6AJ ("the premises"). Full details as well as the objections could be seen in the agenda pack.

During the 28 day consultation period, an objection had been received from the Environmental Health Department relating to the prevention of public nuisance licensing objective and a valid objection was received from a local resident.

The Chairman explained the Council's hearing procedure and the Licensing Sub Committee Members, the Agent on behalf of the Applicant, the Environmental Health Officer and Officers assisting the Members introduced themselves. Ms Clare Bradley was present to speak on behalf of the Environmental Health Department. The Agent acting on behalf of the Applicant, Mr Chris Mitchener was also present to speak.

Mr Mitchener and with the consent of Ms Bradley submitted photographs of the premises which provided a view of the premises and its proximity to residential properties as late evidence.

The Licensing Officer introduced the application and summarised his report and the objections received. It was confirmed that a variation application was granted under delegated authority (there having been no relevant representations received) on 20th June 2017 to increase the hours permitted for the sale of alcohol and to allow the premises to be open to the public for

twenty four hours a day. Mr Mitchener clarified that the premises had started operating 24 hour opening on 14 August 2017 as part of a planned operational programme.

Ms Bradley summarised her representations which could be seen in the agenda pack. It was highlighted that residential premises were very close in proximity to the premises the closest being 2 metres away and it would be highly likely that these residents would be disturbed by a 24 hour licensed premises. It was explained that the objector had already identified that they were disturbed from noise and happenings at the premises. The view from the Environmental Health Department was that this was not an appropriate location for what would be a 24 hour off licence due to the likelihood of customers being drawn to the premises to purchase alcohol which would result in an increase in vehicles, people, and as a result create a noise nuisance.

In response to questions from Members, Ms Bradley explained that whilst only one representation from a local resident had been received, other residents had expressed concerns about noise and disturbance with at least one having advised that they were unaware of the application until it was too late to make a representation. Ms Bradley also clarified that the sale of late night refreshments (limited to hot drinks) alone was not deemed by the Environmental Health Department to attract a significant amount of people to the premises and therefore not a concern.

Ms Bradley also confirmed that there had been one historic residential complaint which had been outlined in the Environmental Health representations. This dated back to 2004 and related to noise from vehicles and early morning deliveries.

The Licensing Officer responded to a Members question to clarify that there was one other similar premise in the District which had a 24 hour alcohol licence located on Amersham Road, Chesham.

Mr Mitchener addressed the sub-committee and re-iterated to members that the effect of the application was the addition of late night refreshments limited to hot drinks and the additional seven hours of alcohol sale. Mr Mitchener highlighted that this was a semi-residential area including commercial and retail premises and that there had been no evidence produced which would indicate that the sale of alcohol would increase noise levels over that created through the sale of other products. Mr Mitchener drew attention to paragraphs 2.8 and 2.10 of the Councils Licensing Policy and paragraphs 9.12 and 9.15 of the Section 182 guidance which he noted would apply in this case. Mr Mitchener added that were there to be complaints which could not be addressed by the applicant, a review of the Premises Licence could be requested. It was further said that due to the type of premises very few sales would be solely alcohol purchases and for the most part this premises would attract vehicular customers rather than pedestrians due to its location.

Mr Mitchener highlighted that only one resident from Shortway had made a representation and that other immediate neighbours to the premises had not made a representation. Mr Mitchener advised members that the Applicant had many 24 hour licensed premises across the country and were experienced

operators who liaised with local communities. Following an operational review, 84 variations nationwide had been applied for and where legitimate representations were made three had been withdrawn following careful assessment. A Member questioned whether there had been complaints at other locations where the 24 hour sale of alcohol had been permitted. Mr Mitchener advised that there had not been, although should any issue be raised these would be dealt with appropriately by the Management at the premises or the relevant authorities and if required by way of review.

Members were advised that the premises staff were trained in the sale of alcohol and were regularly re-trained and re-tested. The DPS regularly completed audits and a refusals log, incident book and monthly training book were kept.

A Member clarified that Shortway was a two way road although only allowed entry from one end.

The Chairman invited comments on a “without prejudice” basis from Members and the Parties on each of the proposed conditions as outlined in the Licensing Officer’s report. Comments were raised as below:

Condition 2 – Members suggested that this condition be amended to include reference to *‘The CCTV coverage shall include the areas of the forecourt, the entire store and the pay window’*. The reasoning for this was that were there to be any disturbance it would be made easier to identify the perpetrators. This amendment was agreed by Mr Mitchener and Ms Bradley.

Condition 7 – It was clarified that late night refreshments (hot drinks) would be provided through a Costa machine or similar.

Condition 9 – Mr Mitchener stated that the Applicant wished that this condition be replaced with the condition proposed in the Operating Schedule so that between 2300 and 0530 the door would be locked and access to the shop would be at the discretion of the cashier otherwise the door would remain locked. This was on health and safety grounds. Members and Ms Bradley were in agreement with this.

Condition 10 – Mr Mitchener requested that this condition be removed as there had been no representations made suggesting there had been any housekeeping issue at the premises. It was said that there was a working regime in place and a specific 5 a.m. inspection would create a further health and safety issue. Ms Bradley raised no concerns about this condition being removed.

There were no suggested informatives.

Closing submissions were made and all parties confirmed that they were satisfied they had been heard and with what had been discussed and had nothing further to add. In closing Mr Mitchener referred to the Thwaites case and in particular paragraphs 55 and 63.

The Hearing ended at 11.15 a.m. and all were advised that the decision together with the rights of appeal would be sent out within 5 working days.

The meeting ended at 11.15 am

RESOLVED

That the application for a variation to a Premises Licence for Shell Amersham Filling Station, 40 – 42 Woodside Road, Amersham HP6 6AJ be allowed in full with immediate effect, subject to the mandatory and other conditions set out in the Schedule to the report, but amended, added to and deleted by the Sub Committee, as set out in full in the Decision Notice attached to and forming part of these minutes.

CHILTERN DISTRICT COUNCIL

LICENSING ACT 2003, AS AMENDED

**APPLICATION BY MOTOR FUEL LIMITED FOR A VARIATION OF
A PREMISES LICENCE**

DECISION OF THE LICENSING SUB-COMMITTEE SITTING ON 15th AUGUST 2017.

The Licensing Sub-Committee had before it an application from Motor Fuel Limited to further vary the existing Premises Licence reference number 17/00869/LAPRE for the Shell Amersham Filling Station, 40-42 Woodside Road, Amersham, Bucks HP6 6AJ.

The Variations applied for are set out in the Application Form appended to the Licensing Officer's report at Appendix 3 ("the Report") a copy of which all the Sub-Committee Members and Relevant Parties had received.

The Variations sought can be summarised as follows –

- Sale of Alcohol – permission to **extend** the current permitted hours.
- To introduce Late Night Refreshment – limited to hot drinks only.

No other variation to the Premises Licence was sought.

Relevant representations objecting to the application received from Chiltern District Council's Environmental Health Department and one from local residents who did not attend the Hearing were listed in the Report at paragraph 4 and a copy thereof appended to the Report.

The Licensing Sub-Committee, having listened to all the evidence, submissions and responses thereto and having read all the material before it including the Report and a copy of two photographs taken from the forecourt of the Licensed Premises submitted at the Hearing by the Applicants Representative with the consent of the Environmental Health Officer present, was satisfied on balance that in all the circumstances and for the Reasons given below that this Application be **ALLOWED IN FULL** with immediate effect as follows:

**Late Night Refreshment – Limited to hot drinks only - Indoors only –
Mondays to Sundays inclusive - 23:00 to 05:00.**

**Supply of alcohol – Off the Premises only -
Mondays to Sundays inclusive – 00:00 to 00:00 (24 hours a day).**

Subject to the Mandatory Conditions and the existing and additional Conditions set out in the Schedule to the Report but **amended, added to and deleted** by the Sub-Committee as follows –

Condition 2 - shall be amended as **shown in bold** –

A CCTV system will be installed, maintained in working order and operated at the Licensed Premises for the duration of all licensable activities to a standard and in accordance with established Thames Valley Police Guidance on installing CCTV as amended from time to time/as agreed and approved in writing by **Chiltern** District Council's Licensing **Manager**. The CCTV coverage shall include the **forecourt, the Shop (including** the areas for the display of beer, spirits and wine) **and the Pay Window**. The recordings from the system whether installed in digital or other format will be retained for a period of 28 days and stored during that time in a suitable and secure facility and will be made available to an authorised officer of the **Chiltern** District Council and/or the Police when requested. A sign advising patrons that CCTV is in operation will be positioned in a prominent position on the Licensed Premises

Reason: The Licensing Sub-Committee having noted the representations regarding Public Nuisance and the submissions by the Applicant's Representative regarding the use of CCTV cameras at the Licensed Premises, considered that by ensuring the coverage of the CCTV included these additional areas this would assist in quickly identifying any causes and/or perpetrators of disturbance at the Licenced Premises. The Licensing Sub-Committee considered the amendment to be justified and appropriate in preserving the Prevention of the Public Nuisance Licensing Objective.

Condition 6 shall be amended to refer to **Chiltern** District Council (a typographical error).

Condition 9 shall be deleted and the following Condition 9 imposed on the Premises Licence:

Access to the Shop between the hours of 23:00 and 05:00 Mondays to Sundays will be at the discretion of the Cashier and the entrance door to the Shop will be operated by a shunt lock. Otherwise the entrance door to the Shop will remain locked between the hours of 23:00 and 05:00 Mondays to Sundays.

Reason: The Licensing Sub-Committee having noted the submissions by the Applicants Representative regarding Health and Safety concerns and in view of Members concerns regarding controlling access to the Shop late at night considered that the proposed condition should be replaced with a condition in line with that stated in the Operating Schedule. The Licensing Sub-Committee considered this to be justified and appropriate in preserving the Licensing Objectives.

Condition 10 – shall be deleted.

Reason - Members considered that there was no justification for this condition in light of there being no representations regarding litter and no concerns raised by the Environmental Health Officer.

This decision is considered to be justified as being appropriate for the promotion of the following Licensing Objectives

- Public Safety
- Prevention of Public Nuisance

- Prevention of Crime and Disorder
- Protection of children from harm

and proportionate in consideration of the written representations and submissions made at the Hearing.

Reasons.

The Licensing Sub-Committee considered very carefully the Local Residents written representations which related to Public Nuisance namely concerns regarding an increase in noise levels if the premises was open all night and that they were currently disturbed by noise from cars albeit that this was said to be infrequent.

Members noted the location of the Licensed Premises generally being situated on the corner of Woodside Road being a busy A- road and the main route between Amersham and Rickmansworth and Shortway which is a quiet residential street and also in relation to the Objectors premises. That it was located within a mixed use area of residential properties and commercial/retail uses. It noted the access arrangements as explained at the Hearing. Members also noted that there was a 24 hour Licensed Garage in Amersham Road Chesham.

The Licensing Sub-Committee also considered very carefully the Environmental Health Officer's written representations and the submissions made at the Hearing regarding Public Nuisance. It noted that there is a residential premises very close to the Licensed Premises being only 2 metres away and it was highly likely that disturbance would be caused by what would effectively be a 24 hour Off Licence operating in a residential area. That there was a risk that by having a 24 hour off licence here that people would be drawn to the Off Licence and this would lead to an increase in vehicle noise and door slamming. Therefore for these reasons the Environmental Health Officer did not consider that this was an appropriate location for an Off-Licence. However, Members also noted that there had not been any complaints regarding the Licensed Premises other than in 2004 as referred to in the Environmental Health Officers written submissions.

Regarding the provision of Late Night Refreshment it was noted that as this would be limited to hot drinks only the Environmental Health Officer was of the view that this in itself would not significantly increase the numbers of people visiting the petrol station.

Members took into consideration the detailed submissions made by the Applicant's Representative which included confirmation that the Licensed Premises had started to open 24 hours a day as of last night which was part of a planned programme following a variation to the Premises Licence granted in June 2017. That this tended to be primarily a vehicular site used by people with cars and experience indicates that vehicular sites do not tend to have alcohol only sales as customers would get out of their car to get petrol and other items from the shop. That whilst there would be additional noise during the night that it could not be said that this would only be the result of the additional hours applied for.

That the main concern related to noise and referring to the photographs there had not been any representations received from other residents living close to the Licensed Premises or by any other Responsible Authorities.

That there had been no evidence adduced which needed to be limited to the extra hours applied for under this Variation. Regarding the sale of alcohol it would have to be shown that any disturbance was attributed to the sale of alcohol during the extra hours applied for and not from the sale of petrol and/or other items sold in the shop and that it was very rare for alcohol to be purchased on its own at this type of site. That members of staff had very clear guidelines regarding the sale of alcohol and were regularly assessed and tested and were employed on the basis that they were able to do their job and all the responsibilities that went with it.

Regarding the provision of Late Night Refreshment the Applicant's Representative submitted that only a passing reference was made in the representations and this was not seen as problem. That the provision of Late Night Refreshment was benign and could have been applied for by way of a Minor Variation application as the Premises could already open 24 hours a day.

The Applicant's Representative confirmed that the Applicant had over 189 Premises licensed to sell alcohol 24 hours a day and so they were not unused to operating for 24 hours. That the Management worked closely with the Community and would address any concerns as it had done regarding a floodlight when the canopy was raised at the Licensed Premises. That if concerns or complaints could not be resolved then there was the Review provisions under the Licensing Act 2003.

During his submissions, the Applicant's Representative referred Members to paragraphs 2.8 and 2.10 of the Council's Licensing Policy regarding hours and paragraphs 9.12 and 9.15 of the Section 182 Guidance regarding the role of the Responsible Authorities and the test regarding evidence. Reference was also made in closing to the decision of the High Court in Daniel Thwaites plc v Wirral Magistrates Court [2008] EWHC 838 (Admin) and in particular paragraphs 55 and 63 thereof. That there was a need to adduce evidence and that decisions needed to be evidence based not based on fear of what might happen referring again to the Review provisions which Members duly considered.

In determining this application Members also considered what the Applicant can do now under its current Premises Licence, namely it can open 24 hours a day and the effect of the Variation if it was allowed and that there had only been one objection from local residents, an objection from Environmental Health and no complaints since 2004.

Having considered very carefully all the submissions made to them and also the written representations, Members concluded that on balance there was no justification to refuse the application and could only afford limited weight to the representations from Environmental Health.

The Licensing Sub-Committee also took into consideration that some of the concerns raised were based on what might happen if the application was allowed. In considering this the Licensing Sub-Committee had regard to the Home Office

Guidance referred to and also paragraph 9.43 thereof - that decisions should be evidence-based.

Regarding the **Conditions** now imposed on the Premises Licence, it was noted that proposed Conditions 1 and 3 to 8 were agreed by the Applicant and no comments were made in respect thereof by the Environmental Health Officer. Regarding the imposition of amended Condition 2, new Condition 9 and the deletion of Condition 10 having listened to the submissions made to them Members imposed Conditions 2 and 9 and deleted Condition 10 for the reasons stated above noting that the Environmental Health Officer raised no comments or concerns.

Therefore in granting this application in full the Licensing Sub-Committee considered that the variation to the Premises Licence was reasonable and appropriate for this type of premises which could open 24 hours a day and for the location and that the Conditions now imposed on the Premises Licence together with the Mandatory Conditions, were sufficient, proportionate and appropriate measures if properly implemented to address the concerns raised in the representations regarding Public Nuisance and noise.

The Sub-Committee, whilst making this decision, also took into account and gave weight to the ability of the Objectors to make representations in the future which will lead (where evidence shows the Licensed Premises is the cause of public nuisance), to a Review of the Premises Licence where steps could be taken to address the issues. Accordingly the Objectors should be reassured that the Licensing Authority does have significant powers when dealing with a premises on review if appropriate and proportionate in all circumstances.

The Licensing Sub-Committee also had regard to

National Guidance;
The Council's Licensing Policy;
The Human Rights Act 1998, as amended and
The individual merits of this case

before reaching this decision.



**Head of Legal and Democratic Services and
Clerk to the Licensing Sub-Committee**

DATED 18th AUGUST 2017.

ATTENTION IS DRAWN TO THE ATTACHED RIGHTS OF APPEAL

YOUR RIGHT OF APPEAL
Licensing Act 2003, Section 181, Schedule 5

Rejection of applications relating to premises licences

- 1 Where a licensing authority-
- (a) rejects an application for a premises licence under section 18,
 - (b) rejects (in whole or in part) an application to vary a premises licence under section 35,
 - (c) rejects an application to vary a premises licence to specify an individual as the premises supervisor under section 39, or
 - (d) rejects an application to transfer a premises licence under section 44,
- the applicant may appeal against the decision.

Decision to grant premises licence or impose conditions etc.

- 2 (1) This paragraph applies where a licensing authority grants a premises licence under section 18.
- (2) The holder of the licence may appeal against any decision-
- (a) to impose conditions on the licence under subsection (2)(a) or (3)(b) of that section, or
 - (b) to take any step mentioned in subsection (4)(b) or (c) of that section (exclusion of licensable activity or refusal to specify person as premises supervisor).
- (3) Where a person who made relevant representations in relation to the application desires to contend-
- (a) that the licence ought not to have been granted, or
 - (b) that, on granting the licence, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) or (c) of that section,
- he may appeal against the decision

Variation of licence under section 35

3 (1) This paragraph applies where an application to vary a premises licence is granted (in whole or in part) under section 35.

(2) The applicant may appeal against any decision to modify the conditions of the licence under subsection (4)(a) of that section.

(3) Where a person who made relevant representations in relation to the application desires to contend-

(a) that any variation made ought not to have been made, or

(b) that, when varying the licence, the licensing authority ought not to have modified the conditions of the licence, or ought to have modified them in a different way, under subsection (4)(a) of that section,

he may appeal against the decision.

If you wish to appeal you must do so within 21 days beginning with the day you were notified of the decision.

The postal address for the Magistrates' Courts that cover the Chiltern Area is:

Milton Keynes Magistrates' Court, 301 Silbury Boulevard,
Witan Gate East, Milton Keynes, Buckinghamshire MK9 2AJ