

Licensing Sub-Committee

Friday, 25th October, 2013
10.00 - 11.43 am

Attendees	
Councillors:	Anne Regan, Diggory Seacome and Charles Stewart
Also in attendance:	Vikki Fennell, Solicitor Phil Cooper, Licensing Officer

Minutes

1. ELECTION OF CHAIRMAN

Councillor Seacome was duly elected as Chairman.

2. APOLOGIES

None

3. DECLARATIONS OF INTEREST

None

4. APPLICATION FOR A VARIATION OF A PREMISES LICENCE

Phil Cooper, Licensing Officer introduced the report as circulated with the agenda. An application had been received from Global Fuel (UK) Ltd in respect of BP Prestbury Road Service Station, located at 80-86 Prestbury Road, Cheltenham to vary their existing premises licence.

A copy of the application form is attached to Appendix A of the report.

The applicants have applied for a variation of their existing premises licence to extend the hours during which alcohol may be sold and to include the provision of late night refreshment.

The times and activities authorised by the existing premises licence are as follows;

Sale/supply of Alcohol	Monday to Saturday	08:00 – 23:00
	Sunday	10:00 – 22:30

The times and activities applied for by way of variation of the premises licence are as follows;

Sale/supply of Alcohol	Every day	00:00 – 00:00 (24 hours)
Late night refreshment	Every day	23:00 – 05:00

The applicants have stated the following steps to promote the four licensing objectives:

- Between 24:00 & 06:00 hours, unless there are two staff on duty in-store, then the entrance doors are to be locked and alcohol will only be sold via the night hatch, spirits located behind the counter.
- Appropriate staff alcohol sales training to be satisfactorily completed and records. Written training records to be made available for inspection upon reasonable request be a relevant officer of a responsible authority. Appropriate training manual utilised.
- Appropriately worded notices to be displayed prominently inside and outside the store requesting customers to leave the site quietly at night.
- Forecourt to be swept regularly. Forecourt bins to be emptied regularly.

No representations have been received from responsible authorities.

Valid representation have been received from 13 people on the grounds of public safety, the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm. Points 4.2 – 4.16 of the report details the name and addresses of the objectors and their concerns.

Copies of all of the residents' representations are attached to Appendix B of the report.

A petition in support of the application had been received, signed by 157 of the services station's customers. The petition showed 149 people (95%) indicated they were in support of the application, 5 signatories objected to the application and 3 entries were spoilt. A copy of the petition is attached to Appendix C of the report.

Appendix D of the report shows the locations of the residents' properties and that of the premises.

Appendix E of the report details an internal layout plan of the premises.

Mr Roy Light, Advocate for the applicant, Mr Richard Baker, Agent from RB Retail & Licensing Services Ltd and Mr Kris Narabatnam, applicant attended the committee and spoke in support of the application.

Mr Light referred the Committee to the extra bundle of papers and asked Members to look at page 26 of the agenda papers. This detailed that the premises wanted to sell hot pies, savouries, soup and hot drinks for consumption off the premises. Mr Light reassured the Committee that it was not the intention of the premises for people to come into the premises to have a few drinks and a meal, this was not going to happen. The applicant would be happy for this wording to be added as an additional condition to the licence if granted.

Mr Light referred to the Secretary of State Guidance from June 2013 and read paragraph 10.13 out to the Committee. The guidance stated that unless there are good reasons not to grant the variation of the licence based on the Licensing Objectives then the requested hours should be granted.

Mr Light moved on to the representations received and stated that they mainly focused on noise disturbance resulting in sleep disturbance and causing lack of enjoyment of residents' properties.

The applicant has twelve sites in total all with shops and all selling alcohol. Ten of these sites trade 24 hours a day with six selling alcohol 24 hours a day without any issues. The applicant runs these sites properly and does not want to upset residents or his customers. Since taking over and reopening the premises on 8 August 2013 the applicant has made several changes to the site. Residents had raised concerns about petrol deliveries at midnight to 01:00 or 02:00 resulting in noise to local residents. The applicant has changed this to ensure fuel deliveries are only made between 9am and 5pm. The applicant always tries to address concerns if he can. Residents also raised concerns about light pollution caused by the pole light. The applicant has now arranged for the pole and canopy lights to be switched off at 11pm. Whilst the applicant was away a resident notified him that the lights were turned off late one evening at 11.10pm. The applicant has introduced a timer to ensure this will not happen again and the lights are turned off at 11pm each night.

The applicant is not somebody who wants to steam roller local residents but wants to work with them and try and help. Concerns were raised over noise on the forecourt. The applicant ensures that the pumps closest to the road are closed off at night to reduce noise levels.

Mr Light detailed the hatch system that is used between 00:00 and 06.00am. Mr Light referred to a recent incident of a customer knocking on the window at midnight to attract the cashier's attention so they could buy some flowers. The applicant has arranged for a buzzer to be installed which is loud enough for the cashier to hear but would not disturb local residents. The Police raised concern with one cashier being on site if the hatch was not in use. If the doors were to remain open the Police requested that 2 members of staff are in the store. The applicant will see how things pan out and then decide which days are busiest resulting in the hatch being in use or not. Mr Light confirmed that Mr Baker has been in touch with an acoustic company specialising in reducing the noise from hatches and passed a photograph to residents to look at. A survey would take place and a new highly efficient hatch would be installed.

Mr Light referred the committee back to the second bundle which showed an incident and refusal log that has been in use since the applicant took over the premises. Apart from one complaint about the light pollution no other complaints had been made about how the premises is operated and none of the responsible authorities had objected to this application.

The largest number of entries in the incident and refusal logs, contained in the additional bundle, was due to customers wanting to buy alcohol out of hours. Customers come into the premises to buy their shopping all together including alcohol. If existing customers are unable to buy their shopping in one go from this premises they will stop shopping here and go elsewhere. Therefore, this application is an essential part of the business to be able to offer these things.

Mr Light referred the committee to page 30 of the bundle which described the additional steps the applicant intends to take to promote the four licensing objectives as a result of the proposed variation. Mr Light read the steps out as follows:

- Between 24.00 and 06.00 hours unless there are two staff on duty in store then the entrance doors are to be locked and alcohol will only be sold via the night hatch, spirits located behind the counter.
- Appropriate staff alcohol sales training to be satisfactorily completed and recorded.
- Written training records to be made available for inspection upon reasonable request by a relevant officer of a responsible authority.
- Appropriate training manual utilised.
- Appropriately worded notices to be displayed prominently inside and outside the store requesting customers to leave the site quietly at night.
- Forecourt to be swept regularly.
- Forecourt bins to be emptied regularly.

Mr Baker showed the Committee the training manual and explained how the staff are trained. Mr Baker referred to section 3 of the training manual which states that staff are expected to read this prior to selling alcohol, all staff are retrained on this material. Once the material has been read staff are tested with a written examination of multiple choice questions. There are four different tests and all staff are tested on an annual basis and marked by the designated premises supervisor. Once the staff have passed the exam these records are kept on file, the staff have to sign a statement which states the do's and don'ts which they must abide by, this is counter signed by the designated premises supervisor. Members of staff are also given a pamphlet to keep at home and refer to. The refresher training coincides with the annual petroleum training.

Mr Light referred the committee to the final page of the additional bundle, the petition. Mr Baker detailed the analysis of the petition. The petition was left on the counter for customers to complete. Breaking down the 149 signatures in support of the application, 25 of them lived within 200 meters of the premises and the remaining 124 lived further away.

Mr Light referred back to the representations made and added the number of opposing residents living very near to the premises from the petition. In total there were 17 objections.

Mr Light advised Members that the same amount of weight should not be attached to the petition as to those individual representations and to those residents who had attended today. Mr Light confirmed that 25 members of the public wanted 24 hour alcohol sales.

Mr Light referred the committee to page 88 of the report which showed a map of the premises and highlighted where the objectors' properties were in relation to the premises. Mr Light explained that the red box on the plan indicated the premises and the blue dots showed the location of the objector's premises. The objector's property to the left of the premises was some distance away and a road was situated between the property and premises. Three of the other objectors' properties were not visible to the site. Another objector's property was set back from the premises. Numbers 95 and 87 Prestbury Road were two of four properties closest to the site. Two of these premises had made representations, two have not.

The applicant understands the residents' concerns and is confident that the variation would not increase disturbance to residents. The premises has a 24 hour a day planning permission so there would be no difference in the noise coming from the premises if this application was granted.

The applicant asked his staff to record a survey of customers attending the premises or members of the public walking past. The survey was recorded over several dates between 11pm and 6am. On average in a two week period there were 10 pedestrians who came in to the premises and 13 who walked on by without entering the premises. The member of staff noted that these people were decent and of good behaviour. The number of customers arriving by car was more than customers on foot. These results were supported by the CCTV images.

Mr Light showed residents a photograph of the premises.

Mr Light referred to the separate bundle of papers and explained about the Thwaites case. He referred to paragraph 63 of the case and read; had they had proper regard to the Act and the Guidance, they would have approached the matter with a greater reluctance to impose regulation and would have looked for real evidence that it was required in the circumstance of the case. Their conclusion that it was so required on the basis of a risk of migration from other premises in the vicinity was not one to which a properly directed bench could have come. The fact that that the Police did not oppose the hours sought on this basis should have weighed very heavily with them.

Mr Light said he understood the residents' concerns but there was no evidence to support these concerns.

Members asked the following questions:

- A Member asked if the premises stopped retail lorries filling up with fuel during the night.
- The applicant stated that he did not stop these lorries but these sort of vehicles did not use this premises for buying fuel.
- Mr Light stated that this was nothing to do with the variation application today. The premises was open as it stands with its current licence 24 hours a day if these sort of vehicles wanted to use the petrol station.
- When asked, the applicant said he would need to run the operation for a period first before deciding if the premises was to operate with two members of staff or one with the night hatch in use.
- When asked, the applicant stated they did not allow customers to drink alcohol bought on the premises on site. The applicant confirmed they did not sell alcohol to customers who appeared drunk. The applicant advised the Committee that he was happy to add additional signage to state that no alcohol was to be consumed on the premises.
- When asked, the applicant advised the Committee that at present the alcohol is closed off with shutters when not in the current selling hours. The applicant told the Committee that he has been trading in these sort of premises since 2003 and has not had any problems. No one has drunk alcohol on any of his premises.

- When asked, the applicant confirmed since he has opened this premises on 8 August 2013 there had been no police reported incidents.
- A Member stated they thought additional customers would be attracted to these premises if the application was approved for 24 hour alcohol sales.
- The applicant confirmed that his premises had been turning away regular customers. His customers wanted to buy all their shopping at one time and at present they were unable to buy alcohol at all hours. Customers will eventually shop elsewhere.
- Mr Light referred the Committee to the additional bundle and stated that there were 6 other similar premises locally with 24 hour licensed sites.
- A Member stated that the incident and refusal log was very comprehensive

Mr Clay attended the Committee and spoke on behalf of the following residents:

Mr & Mrs Edwards, Mr & Mrs Garside, Liz Allan, Andrea Clarke, and Mr & Mrs Haynes.

- Mr Clay asked the applicants why they felt the need for a petition.
- Mr Baker stated that he wanted to enable customers to state if they felt they opposed or supported the application. The petition was left on the counter for customers to complete.
- Residents felt this was unfair and that the petition did not state what the effect of this application would have on local residents. They felt the petition was made of fiction.
- Mr Light stated that this was why Mr Baker had analysed the results of the petition, these results showed 25 local residents in support of this application.
- Mrs Allen stressed that her address was stated on the petition and her own address was listed in favour of this application. This was not true, Mrs Allen stated she had not signed the petition in favour of this and had objected to this application by means of a completed representation.
- When asked, the applicant confirmed that the forecourt is swept between the hours of 6am and 11pm.
- Mr Clay stated that public nuisance complaints had been lodged to Environmental Health. The resident's specific noise concerns related to vehicles approaching the site, raised voices and doors slamming. Residents felt that this application would increase trade to the premises and escalate the current noise nuisance that was currently occurring.
- Mrs Allen stated that she could see the premises from her bedroom window. Whilst Mr Light had said her premises was not in view of the site Mrs Allen reminded the applicant that at present her trees in front of the property were in leaf. In a few weeks time those leaves would fall and the trees would be bare resulting in a clear view from her property to the premises. Mrs Allen stated again she had not signed the petition to support this application and questioned the accuracy and integrity of this petition.
- Mr Light said he did now know why this signature appeared on the petition

Councillor Colin Hay attended the Committee and spoke on behalf of his local residents. He stated that there was no problem with the owner or his responsibilities towards the premises. The applicant shows he runs this and other premises very well. Councillor Hay stated his worry was the location of this premises. Footfall from town would divert past these premises and members of the public could stop off and buy alcohol from this site. One person stopping here that had had too much to drink could cause anti social behaviour.

Councillor Hay referred to the lack of Police representation and stated that the Police were unable to object to an application unless there was specific evidence of problems relating to premises. Councillor Hay said he had spoken to local Police Officers and they were concerned about additional alcohol related antisocial behaviour in this area.

Councillor Hay said he had seen the petition on the counter of the premises. He felt that a better approach for a petition would have been for an anonymous box for customers. An open petition on the counter made it difficult for customers to oppose the application.

Councillor Hay stated that he was concerned about the footfall passing this premises late at night.

When asked, Phil Cooper confirmed that if the application was granted the premises would be liable for the late night levy fee, should such a levy be adopted in Cheltenham. When asked, a Member confirmed that part of the late night levy fee would go to Cheltenham Borough Council.

A resident asked the applicant what times the newspapers were delivered to the premises.

The applicant confirmed the newspapers are delivered between 4am and 5am. The applicant said he would try and arrange for this time to be altered if the current time caused nuisance to residents.

When asked, Councillor Hay confirmed that he represents residents on the opposite side of road from the premises.

Mr Haynes detailed the incident previously noted, a customer knocked on the window late at night to buy flowers. This was at 4am, Mr Haynes said he had reported this to the Environmental Health Department. Mr Haynes stated that he and his wife had moved to their back bedroom due to result of the noise from this premises. All he and his wife wanted was a good night's sleep.

In summing up, Mr Light said that this application was submitted as a result of demand from customers. Mr Light referred back to the Thwaites case which states that evidence must be seen, residents can't just object, they have to have evidence. There have been no problems with the premises. Residents have concerns but given the lack of evidence the application should be granted and if there are issues then the applicant can deal with them and the residents can inform the Council and the licence can be reviewed.

IT WAS RESOLVED THAT;

in respect of the application by Global Fuel (UK) limited in respect of the BP Prestbury Road Service Station, Cheltenham the Sub Committee has read the material presented to it and has listened to all of the evidence and w submissions. The Sub Committee in coming to its decision has also considered the four licensing objectives, the National Guidance and the Statement of Policy. The decision of the Sub Committee is: -

The application for an extension to the hours of sale of alcohol and to include the provision of late night refreshment is granted as requested by the applicant in their application subject to the mandatory conditions and conditions consistent with the steps outlined by the Applicant as detailed on page 16 of their application which includes alcohol training, signage etc. and to the following condition:

That there will be signage placed in and outside the premises and on the garage forecourt to say that alcohol purchased at the garage is not to be consumed on the premises.

The Sub Committee has placed this condition on the licence for the purpose of promoting the licensing objective of the prevention of public nuisance and the potential for noise disturbance on local residents.

In all other respects the Sub Committee has found that the licensing objectives are satisfied and that the condition imposed on the licence will ensure the licence meets these objectives.

The Interested Parties are reminded that should the Applicant fail to meet the licensing objectives that they can report matters to the Licensing Authority and the Applicant and that the licence can be the subject of a review.

The Chairman advised residents to record any incidents to ensure a record is kept.

Chairman