

**MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE HELD AT
FOLLATON HOUSE, TOTNES ON WEDNESDAY 7 DECEMBER 2011**

Present: Cllrs Baverstock, Carson and Gilbert
N Hill, Solicitor
G Munson, Business Support Manager
T Johnson, Solicitor
D White, Democratic Services Manager
N Wopling, Licensing Officer

Members also in attendance and participating (for Minute LSC.17/11 only):
Cllrs Barber, Holway, Pannell and Smerdon

Also in attendance and participating (for Minute LSC.17/11 only):
Leo Charalambides (Ely Place Chambers), Corrigan Lockett (Lockett & Co.) and Claire Kelly (Designated Premises Supervisor)

LSC.15/11 APPOINTMENT OF CHAIRMAN

RESOLVED

That Cllr Carson be appointed Chairman for the duration of the meeting.

LSC.16/11 DECLARATIONS OF INTEREST

Members and officers were invited to declare any interests in the items of business to be considered during the course of the meeting. These were recorded as follows:-

Whilst not a Member of the Sub-Committee, Cllr Pannell declared a personal interest in Item 4: "*To Determine an Application for a New Premises Licence – Shell Carew, A38 South Brent, South Brent TQ10 9ER*" (minute LSC.17/11 below refers) by virtue of being a licensee at the South Brent Village Hall and remained in the meeting and took part in the debate thereon.

Mr T Johnson declared a prejudicial interest in Item 4: "*To Determine an Application for a New Premises Licence – Shell Carew, A38 South Brent, South Brent TQ10 9ER*" (minute LSC.17/11 below refers) by virtue of knowing Mrs Kelly who, following agenda publication, had now been named as the proposed Premises Supervisor and proceeded to leave the meeting during consideration of this item.

L.SC.17/11 TO DETERMINE AN APPLICATION FOR A NEW PREMISES LICENCE – SHELL CAREW, A38 SOUTH BRENT, SOUTH BRENT TQ10 9ER

1. Business Support Manager's Report

The Business Support Manager introduced the report to the Sub-Committee and specifically advised that the application was two-fold. Firstly, the Sub-Committee would need to determine whether or not to grant the application for the sale and supply of alcohol for consumption off the premises, every day, twenty-four hours per day. The second element sought the Sub-Committee to consider the licence for the provision of late night refreshments every day from 11.00 pm to 5.00 am. It was confirmed that the applicants already had a licence for late night refreshment.

In so doing, and in accordance with Section 176 of the Licensing Act 2003, the Sub-Committee was informed that it would need to consider the primary use of the premises. If the premises were deemed to be primarily used as a 'garage' selling petrol / diesel, then the applicants were prohibited from selling alcohol. In the event that the Sub-Committee determined the primary use of the premises to be a 'shop' which also sold fuel, then it would need to continue and determine the application in accordance with Section 18 of the Licensing Act 2003.

2. Address by the Applicants' Legal Representatives

In their address, the applicants' legal representatives urged the Sub-Committee to determine that the primary use of the site was as a convenience store and made specific reference to:-

- (a) the need for evidential proof to be provided by the interested parties in order to satisfy the Sub-Committee that crime and disorder would occur as a result of this application. The representatives argued that this had not been provided;
- (b) this area of the law not being particularly clear. The Sub-Committee was informed that there were currently three appeals lodged to the Magistrates Court in respect of Section 176 of the Licensing Act 2003;
- (c) the letter from the local MP. With regard to the comments in the letter regarding safety, and specifically, being a 'danger to the community', the Sub-Committee was advised that, legally, this did not include health or road safety. The legislation defined 'public safety' as either the public safety of the people using the premises or the store itself (e.g. whether or not it was safe for the public).

When questioned on this point, the representatives stated that for the purposes of the application, the site was defined as the convenience store only and did not take into account access to and from the site. Having said that, it was acknowledged that there was ambiguity in relation to whether a site could also be defined as including its curtilage.

In respect of whether there was a justifiable need for this application, the representatives stated that this was only relevant for planning committees and the open market. Therefore, reference to need was both an irrelevant and unlawful representation;

- (d) the number of service stations who already sold alcohol. In addition, the Sub-Committee was informed that, to date, none of these licences had ever been reviewed;
- (e) the recent 'Thwaites' Case. Having advised the Sub-Committee of the relevance of this case, some Members responded that, at a recent seminar they had attended, it was suggested that this case should not be given any credence when determining such matters;
- (f) the commitment to both adequate security and staff training provision. In addition, the premises retained an incident log which was available for the Sub-Committee to inspect;
- (g) the relationship between the organisation and the franchisee. The representatives confirmed that the organisational arrangement for this particular site was that the franchisee held eight sites within their portfolio (including this site) and (s)he would employ an individual manager for each of these premises.
- (h) the business model. Members were informed that based upon the accounts, it was apparent that the franchisee only made a minimal income from the sale of fuel. In rural areas, it was noted that the number of forecourt sites had reduced from 30,000 to 9,000 and it was therefore deemed essential to fully utilise the convenience store element of each site;
- (i) the lack of representations received from the Environmental Health service and the Police Authority also being content with the application. In addition, the representatives did not consider there to be any particularly strong (if any) representations submitted that stated that the primary use of the site was a garage and not a convenience store;
- (j) in planning terms, there being only three elements to the site. These three elements were: the pumps, the canopy and the convenience store;

- (k) the difficult nature of this application. A Member commented that this was a particularly difficult application to determine and made reference to the degree of hypothesis and ambiguity which were subjective matters for interpretation. In reply, the representatives accepted the difficulties faced by the Sub-Committee and stated that it was an option to grant the application subject to a condition being imposed whereby a six month review be undertaken. As a compromise, the representatives felt that this would be a far more cost effective way forward for all parties to proceed and would enable the matter to be revisited in due course.

3. Points raised by the Interested Parties

The Interested Parties proceeded to raise the following points:-

- (i) In light of the on-site car parking being extremely limited, a Member could not see how the primary use of the premises could be anything but a garage. In highlighting how competitively priced the fuel was at this location, a Member reminded the Sub-Committee that this site was used as the barometer when reviewing taxi fare rates;
- (ii) A Member advised the Sub-Committee that there had been a recent fatality at this site. The Member considered that the potential for similar types of incidents to arise would only increase by granting this licence;
- (iii) If the garage did not exist, it was considered that the shop would no longer be viable, particularly as there were a number of other rival convenience stores in close proximity;
- (iv) A Member felt that since the application had been submitted from Shell, it was reasonable to expect that the primary use of the premises was as a garage. In addition, the premises would not be in its current location as a stand alone convenience store and the view was expressed that customers would not consider visiting the site if it was only a shop due to the danger of the access on and off the A38. In reply, the legal representatives stated that case law had proven that simply because premises resembled a garage, did not mean it should be defined as one;
- (v) In expressing a number of concerns in relation to the figures quoted in the agenda papers, which notably included the gross profit margin figures, a Member considered it was almost impossible to determine this matter today. Therefore, the Member felt that a decision should be deferred to enable for a proper analysis of the figures to be undertaken;

(vi) A Member emphasised that a number of the sales generated by the shop would be attributed to it also being a garage and cited examples including engine oil, screen wash and travelling refreshments and snacks. In countering this point, the legal representatives replied that the statutory definition of a garage was the 'retail of petrol/diesel and the sale (and/or) maintenance of cars.' Therefore, reference to the sale of engine oil etc and the purpose of a visit were deemed irrelevant.

Once all parties were satisfied that they had no further comments or questions, the meeting was adjourned at 11.10 am to enable the Sub-Committee to deliberate the application, in the presence of the Council Solicitor only, who attended in an advisory capacity.

(The meeting was subsequently re-convened at 1.00 pm).

The Chairman then announced the decision of the Sub-Committee.

4. The Decision

The Chairman announced the decision as follows:

"We have debated this application for some considerable time. We are undecided on whether this is a convenience store or garage and we need further information to enable us to apply the test as set out in Merco Petroleum Ltd.

In particular, we would like information on:

1. Gross profit to Shell versus the gross profit to the franchise on all sales.
2. Further clarification between convenience store sales and garage sales.
3. Total number of fuel only customers (i.e. customers who only buy fuel) compared to total number of convenience store only customers (i.e. customers who only buy items from the convenience store).
4. What proportion of profits on convenience store sales go to Shell compared to the franchise."

Upon announcing the decision, it was agreed that in order to provide the applicants with sufficient time to gather this information, the meeting should be reconvened to further consider this application at **2.00pm on Tuesday, 7 February 2012.**

Finally, the Democratic Services Manager requested that, due to the volume of paper accrued for this application, all parties in attendance retain their copies of this agenda for the reconvened meeting.

**LSC.18/11 TO DETERMINE AN APPLICATION FOR A NEW PREMISES LICENCE –
DARTMOUTH YACHT CLUB, 22 SOUTH EMBANKMENT, DARTMOUTH
TQ6 9BB**

1. Licensing Officer's Report

The Licensing Officer introduced the report to the Sub-Committee and advised that the Police Authority had initially made representations requesting that the opening hours be reduced. Since these amendments had subsequently been agreed by all parties, it had therefore been deemed that a formal hearing would not be necessary.

The Chairman then announced the decision of the Sub-Committee.

2. The Decision

The Chairman announced the decision as follows:

“We have considered the application for a new premises licence.

We have considered the Statement of Licensing Policy, the government guidance, and our obligations that relate to the promotion of the four licensing objectives.

Following representation and the agreement reached between parties, we now note all parties consider a hearing unnecessary. We agree.

It is our decision therefore to grant this application subject to the agreed amendments being incorporated into the operating schedule.”

Chairman