

**MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE HELD AT
FOLLATON HOUSE, TOTNES ON WEDNESDAY 22 JANUARY 2014**

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

Members also in attendance and participating:
Cllrs Barber, Baldry, Holway and Pannell

Members also in attendance and not participating:
Cllrs Hicks and Steer

Also in attendance and participating for the Applicant:
Leo Charalambides (Ely Place Chambers), Corrigan Lockett (Lockett & Co), Geoff Wadeson (General Manager & Designated Premises Supervisor)

LSC.11/13 APPOINTMENT OF CHAIRMAN

RESOLVED

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

LSC.12/13 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:-

Mr G Munson and Cllrs Baldry, Carson and Holway declared a personal interest in Item 4: "*To Determine an Application for a New Premises Licence – Shell Carew, A38 South Brent, TQ10 9ER*" (minute LSC.13/13 below refers) by virtue of purchasing fuel from the application site and each remained in the meeting and took part in the discussion on this item.

Cllr Pannell also declared a personal interest in Item 4: "*To Determine an Application for a New Premises Licence – Shell Carew, A38 South Brent, TQ10 9ER*" (minute LSC.13/13 below refers) by virtue of her holding of a personal licence for South Brent Village Hall and remained in the meeting and took part in the discussion on this item.

LSC.13/13 **TO DETERMINE AN APPLICATION FOR A NEW PREMISES LICENCE – SHELL CAREW, A38 SOUTH BRENT TQ10 9ER**

1. Initial Address by the Applicants' Legal Representatives

At the discretion of the Chairman, the Applicant's legal representative, Mr Charalambides, explained that he wished to make two specific preliminary points in respect of the substantive hearing. He made this application as the points would have a direct bearing on the deliberations of the Sub-Committee if they accepted his interpretation of a narrow legal point. These two points were in relation to:-

- (a) Section 176 of the Licensing Act 2003 (the Act) being incompatible with the EU Services Directive; and
- (b) Paragraph 5.5 of the presented agenda report being legally incorrect since it did not take account of new legislation.

In expanding upon these points, Mr Charalambides wished to make specific reference to:-

- the statutory requirement for the Sub-Committee to be non-discriminatory and justified in its decision-making. Furthermore, the Sub-Committee was advised of the importance of being proportionate to public interest, unambiguous and transparent;
- the legislation not speaking to any overriding public interest;
- there being no High Court decisions yet made in relation to Section 176 and its compatibility with EU law;
- the lack of legislative guidance and consequent lack of clarity and inconsistency in respect of whether or not a premises was primarily used as a 'garage' or 'shop' as defined under Section 176;
- there being a number of subjective matters raised in representations regarding whether or not the primary use of the premises was a 'garage' or 'shop'. Mr Charalambides argued that these were irrelevant in light of the legislation which stated that you could not discriminate against one service specifically and in this instance garage forecourts;
- there being far ranging ramifications from this Directive coming into effect, with doubts now being cast on previous cases which had been determined across the country;
- the very recent decision to grant a licence to Wetherspoons to open the first motorway service station pub on the M40.

In his concluding preliminary stage comments, Mr Charalambides reiterated that Section 176 of the Act was now incompatible with EU legislation. Therefore, the Sub-Committee was urged to ignore the matter of the primary use of the premises and was asked to consider whether or not to grant a Premises Licence for this application in the normal manner.

(At 12 noon, the Sub-Committee adjourned in the presence of Messrs Johnson and White and re-convened at 12.10pm).

2. Sub-Committee Decision on the Preliminary Point

The Chairman proceeded to inform those present that the Sub-Committee totally accepted the submission of the legal representatives and the meeting would consequently be progressed on the basis that the primary use of the application should not be differentiated between a 'garage' or a 'shop' and therefore, the hearing would be conducted on the same basis as any other normal premises' licence application.

3. Business Support Manager's Report

The Business Support Manager introduced the report to the Sub-Committee and specifically advised that:

- the premises already had a late night refreshment licence and was open for twenty-four hours per day;
- the shop had recently been redesigned;
- it was his opinion that the premises were suitable for the sale and supply of alcohol;
- the application sought approval for the sale of alcohol between the hours of 0500 and 2400. In the village of South Brent, the pubs could sell alcohol until 2400, with the local convenience stores closing before this time.

4. Address by the Applicant's Legal Representatives

In their address, the Applicant's legal representatives made specific reference to:-

- the wish for the Application to be amended. In light of concerns raised, the representatives informed that they were willing to amend their application whereby alcohol would not be sold between the hours of 2300 and 0800;
- having sympathy with the road safety issues raised in the representations submitted. Whilst having sympathy in this regard, the representatives maintained that this was not a matter for the Sub-Committee to give weighting to during its deliberations. The site was well lit, but it was considered to be a matter for an individual if they wished to walk to the site from the village;
- the officer view that there was no problem with granting the application;
- the responsible authorities having raised no objections to the application. The representatives stated that this supported the belief that the measures put in place by the applicants worked. For example, service was only conducted through a serving hatch between 2300 and 0500, high quality CCTV was in operation, staff training was extensive and staff records were regularly updated. In addition, it was company policy for all spirits to be located behind the counter and individual cans (or strong cans) of liquor were not sold;

- Mr Wadeson (the Designated Premises Supervisor) having worked for Shell for over 22 years and being local;
- the request to transfer (and cancel) the late night refreshment licence and replace it with a new premises licence.

5. Address by the District Council Ward Members

(a) Cllr Holway

In his address, Cllr Holway highlighted that:

- the site was isolated and by its nature, was more attractive to thieves;
- there was potential to encourage more drink driving. Cllr Holway advised that evidence suggested that problems could arise from vehicles in which drivers and passengers were looking for sites which sold alcohol;
- there was potential for crime and disorder issues to increase after closing time from nearby premises, with concern also being expressed for employees from a public order perspective;
- the poor access in and out of the site, which could lead to potentially more incidents and queues of traffic on the A38;
- the on-site parking was inadequate, with this potentially being exacerbated by the additional sale of alcohol;
- regarding the possibility for pedestrians to access the site, Cllr Holway also advised that there had been at least one fatality in the vicinity of the site;
- there was a potential issue in respect of protecting children from harm. With the site being located half a mile from South Brent, there was potential for adults to purchase alcohol at this site for the consumption of children in the village whilst retaining a degree of anonymity.

(b) Cllr Barber

Cllr Barber wished to raise the following points:-

- He was particularly concerned about road safety issues, with the site having very difficult access on to the A38. Moreover, this site was not a motorway service area and was limited in its space. Whilst the site was well lit, Cllr Barber also pointed out that when leaving the site, it was both very dark and isolated;
- The ease of accidental access for pedestrians (particularly unsupervised children) on to the A38 was felt to be a further public safety issue;
- The proposed amendments to the licensing hours were welcomed by Cllr Barber.

(c) Cllr Pannell

In her address, Cllr Pannell made reference to:-

- the village of South Brent being the most affected by this application;
- her sorrow that the primary use argument had seemingly been superseded;
- her concerns regarding road safety. In echoing the comments raised by other Members, Cllr Pannell also wished to question why the Stop Sign had been removed from the point where customers left the site, which she felt was a retrograde step. In reply, the legal representatives advised that they would look into this matter;
- her belief that there had been an on-site accident only this week;
- the serious concerns of the Parish Council (PC). In stressing the views of the PC, Cllr Pannell felt that an explanation of the primary use matter should be issued to the local PC and the wider Council membership.

(d) Cllr Baldry

Cllr Baldry wished to highlight the following points:-

- Regarding the transparency of the Sub-Committee adjourning to consider the primary use matter and the subsequent decision taken, Cllr Baldry wished for his frustrations at this decision to be formally recorded;
- Frequently, a queue of cars would be backed up on to the A38 from the site entrance;
- There was a distinct difference in the site at the top of Haldon Hill selling alcohol, which was a much larger area, with the ability for coaches to stop on-site. Cllr Baldry also wished to reiterate the points in relation to the site being small, unsafe, a congested area and the dangerous exit on to the A38.

The Chairman thanked the Members for their valued contributions and invited the applicant's legal representatives to respond to any points raised. In so doing, Mr Charalambides replied that:-

- there was no actual evidence regarding the public safety concerns raised;
- they failed to see the difference between granting a licence for this site and a rural, isolated pub.

(At 12.45pm, the Sub-Committee adjourned in the presence of Messrs Johnson and White to determine the licence and reconvened at 12.55pm).

6. The Decision

The Chairman announced the decision of the Sub-Committee 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 licensing objectives.

We have read carefully the written representations from parties not present today and have read carefully representations received from parties present plus additional statements from persons here today.

We did not hear any firm justifiable evidence to refuse this application and it is therefore our decision to grant this application subject to the following changes being incorporated into the operating schedule, which we have determined to be appropriate to achieve the licensing objectives:

- The hours permitted for the licensable activities are between 8.00am and 11.00pm daily;
- Alcohol must only be sold in sealed containers.

Although sympathetic to the issue of road safety, the Sub-Committee is not able to consider this under the Licensing Act 2003, but we would like to informally ask the site manager to reinstall the stop sign at the exit to the site, if at all possible.

Finally, the Sub-Committee endorses the suggestion that the terms of the existing late night refreshment licence should be incorporated into the new premises licence, with that licence then cancelled.

A detailed written notice would be sent to all parties in due course setting out the full reasons behind each of the decisions arrived at.

(The meeting was subsequently declared closed at 1.00 pm).

(Meeting commenced at 11.30 am and concluded at 1.00 pm)

Chairman