

Environmental Health and Licensing

Jackie Fitzsimons – Shared Public Protection Manager



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Our Ref:

Dear

**Premises Licence Variation Application
Licensing Sub Committee: 5 April 2018
Costcutter / Bloxham Service Station**

I write to confirm the outcome of the above hearing.

Report of the Licensing Officer

The Licencing Sub-committee listened carefully to the presentation of the report by the Licensing Officer. The Licensing Officer confirmed that 27 representations had been received during the consultation period objecting to the application; 1 representation had been received in support of the application and 10 irrelevant representations had been received. The Licensing Officer confirmed the statutory licensing objectives as:-

1. The prevention of crime and disorder;
2. Public safety;
3. The prevention of public nuisance;
4. The protection of children from harm.

The Licensing officer confirmed the steps available to the Sub-committee in determining the application so as to uphold the objectives as:-

1. Grant the application;
2. Modify the conditions of the licence;
3. Reject the whole or part of the application.

The Application

The Licensing Sub Committee carefully listened to the application submitted on behalf of the applicant by Mr Chris Mitchener, a representative of Licensing Solutions Limited. Mr Mitchener



explained that the applicant would be moving to 24hr opening 7 days per week and was seeking a variation to the existing premises licence to permit the 24hr, 7 days per week sale of alcohol for consumption of the premises and the provision of late night refreshment between the hours of 2300 hrs to 0500 hrs 7 days per week. Mr Mitchener explained that subsequent to the submission of the application, the applicant was prepared to limit the late night refreshment to hot drinks only and not also to provide hot food as specified in the original application.

Mr Mitchener provided some background information as to the applicant's business and experience and submitted representations in response to the written representations received objecting to the application and stressed that the applicant was entitled to, and would be, opening 24hrs, 7 days per week irrespective of the outcome of the application.

Mr Mitchener submitted that issues raised by those objecting to the application concerned the extension of the business opening times per se, light, noise, signage/ advertising which were planning matters and that no objections to the application had been received from the council's planning department. Mr Mitchener further submitted that additional objections concerned a potential increase in anti-social behaviour, crime, litter, risks to public safety and harm to children, none of which had yet happened and that as regards the current existence of such problems, none had apparently been reported to the police and neither the police nor the council's public protection and environmental protection teams had submitted objections to the application. Mr Mitchener referred the Sub-Committee to the case of *Daniel Thwaites plc v Wirral Borough Magistrates' Court & Others [2008] EWHC 838 (Admin)*.

Subsequent to his representations, Mr Mitchener answered questions from members of the Sub-committee and those at the hearing objecting to the application.

The Objections (relevant representations)

Prior to the hearing, the Licensing Sub Committee had duly considered the written representations received objecting to the application. At the hearing, the Sub-committee carefully listened to the oral representations submitted by Mrs Christine Heath, who was speaking on behalf of herself and a number of residents of Bloxham; Mrs Joanne Barton and Mr Robert Aplin. The objections concerned the proposed 24hr opening and the increase in traffic, light and noise disturbance which would result therefrom; existing anti-social behaviour, litter, instances of crime and risks to public safety which would be exacerbated by the 24hr sale of alcohol, and the risk to children posed by the 24hr availability of alcohol for purchase.

It was suggested that the notification of the application had been inadequate; that contact had been made with the council's planning department and health protection team, and that reports were not made to the police as the expectation was that the police 101 telephone number would be engaged or go unanswered, and that in any event the police would not respond to the complaint.

While no questions were asked of those objecting to the hearing, Councillor Webb sought clarification of a number of points raised and confirmed the issues upon which the Sub-committee was required to focus. The Licensing Officer confirmed that notification of the application complied with the statutory provisions in this regard. Mr Mitchener explained that he would address some of the points raised during the oral representations of the objectors during his summing up.

Summing Up & Deliberation

All parties summed up their arguments and confirmed that they had had sufficient opportunity to address the Sub-committee, subsequent to which the Sub-committee retired to make its decision.

The Determination

The Licensing Sub-committee has carefully considered the written application and the written representations opposing the application received during the consultation period.

The Sub-committee has today carefully listened to the representations submitted by the applicant and the other persons who have attended the hearing to object to the application.

The Sub-committee recognises that this is an emotive and contested application and the decision which it must reach has not been made lightly. The Sub-committee acknowledges and has given very careful consideration to the concerns raised by those opposing the grant of the application which it must weigh against the objectives of Licensing Act 2003; the statutory section 182 guidance to the Act, the council's licensing policy and judicial authority.

The Sub-committee considers that much of the opposition to the grant of the application appears to centre around the proposed 24hr opening of the premises in the whole, and as a result thereof a potential increase in problems emanating from light and noise, and potentially an increase in problems of crime, anti-social behaviour, risks to public safety and harm to children. The licensing Sub-committee is far from unsympathetic to the concerns of local residents as regards the overall increase in opening hours, but considers that opening hours, lighting, signage and the potential engagement of the Bloxham Neighbourhood Development Plan policy are primarily matters of planning law, and further note that notwithstanding any communication which may be on-going with the council's planning department, the planning department has submitted no objections to the application.

The Sub-committee notes that many of the representations opposing the application frequently suggest problems which have yet to manifest, and also refer to existing problems concerning noise, anti-social behaviour, crime, litter and underage sales of alcohol, but further notes that as yet no reports or complaints have been received by the council's licensing department, health protection or environmental protection departments, nor the police regarding such issues. The Sub-committee considers it further significant that neither have any of these responsible authorities objected to the application.

In determining this application the Sub-committee must focus on whether or not the increase in the permitted hours for the sale of alcohol will undermine the licensing objectives of the prevention of crime and disorder; public safety; the prevention of public nuisance and the protection of children of harm. To reject the application or modify the conditions of the licence the Sub-committee would need to be satisfied respectively that no conditions which may be attached to the licence would be sufficient to uphold the licensing objectives; or that the licence conditions proposed require modification for the purpose. In reaching its decision, Sub-committee must afford considerable weight to the views of the responsible authorities and the principle that in the absence of very good reasons to the contrary, a business should be able to sell alcohol for off-premises consumption throughout its hours of business without restriction. Lastly, the Sub-committee notes that should the concerns of the residents be realised, those within the remit of the licensing regime can be explored and addressed by way of a premises licence review which may be requested by a responsible authority or any person at any time.

In summary, the licensing sub-committee would make clear that it has found the determination of this application a far from routine or straightforward exercise, however, on balance it is satisfied that as yet the mandatory conditions applied to all premises licences, the conditions advanced by the applicant and the limiting to the sale of hot drinks only by way of late night refreshment will uphold the licensing objectives and as such grant the variation to the licence as applied for save for the sale of hot food will not be permitted as suggested by applicant.

Appeal

The applicant, a responsible authority or any other person has a right to appeal this decision by giving notice to the magistrates' court within a period of 21 days beginning with the day upon which notification of the determination was given.

Any appeal should be made to Banbury Magistrates Court, The Court House, Warwick Road, Banbury, Oxfordshire, OX16 2AW.

Yours sincerely,

Jackie Fitzsimons
Public Protection Manager