

Appendix 4

This statement together with additional information will be presented at any future hearing.

Key Statement of Facts – Submitted on behalf of the Applicant

After reviewing the Wiltshire Council Statement of Licensing Policy (SOLP) 2019 -2024 and the Revised Licensing Guidance under s182 of the Licensing Act, a full risk assessment was conducted against the 4 Licensing Objectives and the findings are stated here in this Statement of Facts.

After studying the contents of the Wiltshire SOLP 2019 -2024, the original application reasonably addressed each of the Licensing Objectives and an extremely robust, effective and functioning Operating Schedule was prepared and submitted to the Licensing Authority in support the Licensing Objectives; a copy of this was also submitted to each of the 6 Responsible Authorities.

The consultation process was completed, and all the 6 Responsible Authorities agreed and accepted the application as per section 1.1 of the **Wiltshire Council SOLP 2019-2024**.

‘Each application will be determined on its own merits having regard to the licensing objectives; relevant guidance including that issued under Section 182 of the Licensing Act 2003, and local criteria’.

The Responsible Authorities are the experts in their own fields of skill, knowledge and competence and by not submitting any objections it can be safely determined that they are completely satisfied that the application submitted did fully support the Licensing Objectives and the Wiltshire Council SOLP 2019-2024. Fundamentally it also meant that all 6 Responsible Authorities had no concerns; that by granting the Premises Licence in its original

format it would not be undermining any of the Licensing Objectives.

I trust that Mr Allen has already studied the applicant's Operating Schedule, however I have attached a copy of the conditions for your perusal and evaluation at the end of this statement.

The applicant, Mr Bejar Hoshair SHWANI has occupied the premises next door, 1A Wicker Hill Tymbark, Trowbridge for the past five years and has ran a very successful 'Continental Grocery and Off Sales' Supermarket business and by moving his business next door would be in a position to expand the business as 1B is a larger shop.

Mr SHWANI has held the benefit of a premises licence for 5 years at 1A Wicker Hill, operating trouble free within the hours 08:00 x 23:00hrs.

During this 5-year period, the business including the *sale of alcohol* has been well managed and controlled by Mr Shwani and staff have always been sufficiently trained in 'Responsible Retailing', this has resulted in no failed test purchases or any other breaches.

I would now like to address the concerns of Mr Allen in his representation of the street drinkers as follows:

'There has been a long-standing issue with street drinking in the vicinity of the Town Bridge which is adjacent to these premises, despite this area being inside the PSPO area which bans drinking in public places'

We have observed that there is a substantial strategically positioned CCTV camera on the small traffic island opposite the shop that appears to be able to monitor the Town Bridge grassy/wooded area. Because the police have raised no concerns it can be believed that the installation of this camera resolved the

matter and this problem is being managed to the satisfaction of Wiltshire Police and other Officers.

I would like to address another comment in the representation from Mr Allen:

‘Trowbridge Town Council raises an objection to this application in respect of the hours’.

I trust that my clients offer to reduce the hours of the ‘sale of alcohol’ satisfies this concern.

‘Experience suggests that the availability of drink from off-licenced premises during the late evening and early morning is a significant contributory factor’.

I apologise for I am unable to understand what Mr Allen means by this statement as it appears to be slightly abstruse.

Does Mr Allen mean that ***‘the availability of drink from off-licenced premises during the late evening and early morning is a significant contributory factor’***...is related to street drinking?

I agree with Mr Allen’s comment on the face of it, however evidence over the past 15 years has shown that most night-time drinkers actually buy all their alcohol in the daytime from cheaper outlets like Tesco’s or Asda and ‘preload’ before they venture into the night time folly. (Oh, to be young again!).

Currently in Tesco’s Trowbridge, you can buy 18 cans of Carlsberg for £10.99, 3 large (500ml) bottles of Kopparberg, Thatchers Katy Cider, Cobra Lager and 6 cans of Heineken, Stella Artois and Budweiser 3 large bottles of each for only £5.00 and 12 bottles of Corona ‘Extra’ for £10.00. Tesco’s in Trowbridge are normally open 24 hours, but currently close at midnight...And Tesco’s will deliver to your home.

The last sentence of Mr Allen's Statement comments about the hours for the 'sale of alcohol' and suggests a drastic reduction of trading hours.

'The Council therefore considers that the licensed hours should be limited and suggests that acceptable hours would be 09:00 to 21:00'.

May we politely remind Mr Allen of **s6.2 & 8.1 Wiltshire Licensing Policy 2019 -2024**.

'The licensing function is not a mechanism for the control of anti-social behaviour by individuals once they are beyond the direct control of the licence holder of any premises concerned. Conditions attached to licences must only seek to impact on the behaviour of customers on, or in the immediate vicinity of the premises as they seek to enter or leave'.

My client, Mr Shwani's business is a large grocery store selling bread, groceries, milk, tinned goods, toiletries, magazines; it is NOT an 'Off-Licence' that solely retails alcoholic products.

Alcohol will contribute an essential % of his sales as it does with all retailers, Tesco's, Asda, Morrisons, Co-op's and other smaller retailers.

My client has been selling alcohol responsibly in his shop for 5 years and experienced no problems. His type of business is part of the 'service' industry, where it is expected and perfectly acceptable to function with extended trading hours in comparison to an ordinary high street shop that sell shoes, books, clothes, dry cleaners etc. These are the types of businesses you would expect to normally trade with limited hours, such as 9am until 9pm.

My client works very hard and long hours to run a successful business and it should be commendable that he has achieved this success in 5 years especially in the troubled times we are experiencing.

The Licensing Guidance recognises that a key aim of the Licensing Act 2003 is for conditions to be attached to licences and certificates which are tailored to the individual style, characteristics of the premises, events concerned, and which are necessary for the promotion of the licensing objectives in an individual case.

Findings of the 2nd Risk Assessment of the SOLP 2019 – 2024

s1.5 & 6.1 Wiltshire SOLP 2019-2024 - ‘The licensing authority expects individual applicants to address the licensing objectives in their operating schedule having regard to the type of premises, the licensable activities to be provided, the nature of the location and the impact on the local community’

s1.5 - 2.0 & 6.1 Wiltshire SOLP 2019-2024 - ‘Applicants are required by law to set out in their operating schedule the steps they propose to promote the prevention of crime and disorder. Responsible applicants will ensure proper regard in their operating schedule to the location, character and condition of the premises, the nature and extent of the proposed use and the persons likely to be attracted to the premises’.

In further support of the Statement of Licensing Policy (SOLP) Wiltshire 2019 -2024, I have prepared a ‘mapping’ of the Policy against the Operating Schedule for ease of appraisal.

s1.2 Key Aims SOLP 2019-2024. The applicant is happy to ‘work in partnership with other agencies and organisations through both

formal and informal arrangements (if required) towards the promotion and achievement of the objectives set out in this policy'
Op.Sch. 1.5 - 1.6 -1.8 - 2.1 - 2.1(a) - 2.1(c) - 7 - 8 -9.1 - 15 & 16

s.2.3 Wiltshire SOLP 2019-2024 - the premises will operate Compliance Logs i.e. Incident Log, Refusals Log and CCTV Log.
Op.Sch. 1.5 - 1.6 -1.8 - 2.1 - 2.1(a) - 2.1(c) - 7 - 8 -9.1 - 15 & 16

s.2.7 Wiltshire SOLP 2019-2024 - The applicant will endeavour to obtain Personal Licenses for his staff whenever possible. All staff will provide written valid documentation of their Right to Work.
Op.Sch 8

s.3.1 and 3.3 Wiltshire SOLP2019-2024 - The CCTV operating system will comply. **Op.Sch 1.1 -1.2 -1.3 -1.5 - 1.6 - 1.7 - 1.8**

s.4.0 Wiltshire SOLP 2019-2024 - with regard to the Licensing Objective '**Prevention of Public Nuisance**', this operating schedule demonstrates that the applicant is taking appropriate steps to minimise any adverse impact on businesses, the premises does not have a residents within the vicinity that can be affected by his customers entering and leaving the premises. **Op.Sch 6 - 12 -13 - 14 -15 -16 -17 -18**

s.4.3 Wiltshire SOLP 2019-2024. - *'The "duty of care" to ensure any waste is properly contained and controlled while in the operator's possession, and that it is collected by a reputable waste carrier. The Licensing Act does not duplicate these laws, but licence holders will need to apply good waste management practice in order to prevent public nuisance'*. **Op.Sch 13 - 14**

We understand this is relevant to commercial waste only, however this section of the policy is also partly supported by no's 13 & 14 of the additional conditions as follows:

13: The Management will monitor the frontage of the premises, check for any litter and clear on a regular basis within daytime trading hours.

14: The Management will ensure that a refuse bin will be positioned outside the premises.

5.0 & 5.1 Wiltshire SOLP 2019 -2024. With regard to **The Protection of Children from Harm**, robust conditions inside the Operating Schedule have addressed each factor. ***Op.Sch. 7 - 8 - 9.1 & 9.2***

5.2 Wiltshire SOLP 2019 -2024. Proxy Signage is covered by the new additional condition. ***Op.Sch.no 18.***

Including the additional conditions, my client has now offered in his Operating Schedule **A TOTAL OF 24 CONDITIONS** that:

'Promote and give precedence to the Licensing Objectives.

S6.3 Wiltshire Licensing Policy 2019-2024 states; 'Shops, stores and supermarkets are generally permitted to sell alcohol for consumption off the premises during their normal trading hours, unless there are exceptional reasons relating to the licensing objectives, in particular the prevention of crime and disorder and public nuisance'.

– *a retail outlet is not considered to have any adverse effect on residents and businesses unless the owner or staff is actually committing offenses himself. The applicant is willing to agree that he and his staff will never commit any offenses from the premises that will have any adverse effect on local residents. Albeit the premise 'does not' have any residents within the close proximity of the premises. Revised Licensing Guidance.*

What we are familiar with is the policy, that the Licensing Authorities are required to discharge it's functions only 'with a view to **'promoting the licensing objectives'**, so it is not necessary that the Licensing Authorities achieve the licensing objectives or even that it discharges its function with a view to achieving them. ***It is sufficient if the authority is acting with the purpose or intention of attaining the objectives.*** I now believe that this Operating Schedule now fulfils this criteria.

Although the licensing authority will presumably be seeking to achieve the licensing objectives as far as possible, the objectives seem to be more aspirational aims and criteria against which the actions and decisions of the authority will be judged when it is exercising its functions under the Act.

It is unrealistic and an impossibility to expect attainment of the objectives, for if an authority grants a licence for a large-scale event where alcohol is sold, some measure of crime and disorder is inevitable. Therefore, when granting the licence, the authority cannot prevent crime and disorder and it is unfair, unrealistic and unreasonable to expect the applicant to 'prevent crime & disorder' too as then they are being forced to achieve the impossible or penalized because of their inability to achieve the impossible. No-one can stop all crime; all one can do is try to prevent it to the best of their ability.

All business owners and Licensing Authorities can do is to seek by taking measures to **minimise** its occurrence that is what this Operating Schedule has achieved.

In doing so, it is likely that the licensing authority can properly be said to be promoting the licensing objectives, albeit with a realistic recognition that the objectives cannot be wholly achieved.

Judicial support for this may be found in the High Court's decision in *R (on the application of Murray) v Derbyshire County Council* [2001] Env LR 26,

"The judgment to grant this Premises Licence, fundamentally involves an evaluation of risk. If there is no risk, there is no need for interference. If there is a 'significant' risk – whether of physical harm or nuisance to the neighbours – then some form of interference, be it by the imposition of conditions or outright refusal, may be merited. The evaluation of risk can never be weighed as a matter of fact; It is a value judgment".

My client is also fully aware and understands that failure to comply with the conditions of his Premises Licence can result in severe penalties including reduction of hours, revocation, 6-month imprisonment and/or an unlimited fine.

We trust that the amended Operating Schedule is now acceptable, addresses and fully supports our application.

This is a copy of the Operating Schedule that was submitted with the application.

4 licensing objectives

- a) Prevention of Crime & Disorder

- b) Public Safety
- c) Prevention of Public Nuisance
- d) Protection of Children

Each objective has been individually addressed

a) Prevention of Crime & Disorder

1. CCTV

1.1 The premises shall install and maintain a digital CCTV system

1.2 The CCTV system shall have sufficient hard drive storage capacity to store a minimum of 31 days.

1.3 The CCTV system shall be capable of obtaining clear facial recognition images and a clear head and shoulders image of every person entering or leaving the premises at each exit and entrance point.

1.4 A CCTV log will be completed on a weekly basis to record all elements of the CCTV System is maintained in good working order and recordings date and time stamped.

1.5 Only nominated staff shall be trained in the operation of the CCTV system to ensure rapid data retrieval & downloads of footage can be provided to the Police & the Local Authority Officer upon reasonable request in accordance with the Data Protection Act.

1.6 CCTV shall be continually recording during licensable hours

1.7 In the event of a failure of the CCTV system for any reason, a record of the failure will be recorded in the premises log and immediate steps will be made to rectify the problem.

2. Incident / Refusals Register

2.1 An incident log must be kept at the premises. Log records will be retained for a period of 12 months from the date it occurred. It will be made immediately available on request to an 'authorised person' (as defined by section 13 of the Licensing Act 2003), an authorised trading standards officer or the police, and must record the following;

a) All crimes reported to the premises (where relevant to the licensing objectives)

b) Any incidents of disorder

3. When the designated premises supervisor is not on duty, a contact telephone number will be available at all times.

4: All spirits will be stored and sold behind the counter

5: Roller shutters have been installed at the front of the premises.

b) Public safety

No risk has been assessed under the Licensing Act 2003

c) The prevention of public nuisance

6. Prominent, clear and legible signage shall be displayed at all exits to the premises requesting the public to respect the needs of local residents and to leave the premises and the area quickly and quietly

d) The protection of children from harm

7. A written register of refusals will be kept including a description of the people who have been unable to provide required identification to prove their age. Such records shall be kept for a period of 12 months and will be collected by the designated premises supervisor and produced to the police or an 'authorised person' (as defined by section 13 of the licensing act 2003) or an authorised trading standards officer the local authority/council on demand.

8. All staff engaged in the sale of alcohol to be trained in Challenge 25. Training records shall be kept on the premises and produced to the police or an 'authorised person' (as defined by section 13 of the licensing act 2003) or an authorised trading standards officer of the local authority/council on demand

9. Challenge 25

9.1 The premises shall operate a Challenge 25 policy. Such policy shall be written down and kept at the premises. The policy shall be produced on demand of the police or an 'authorised person' (as defined by section 13 of the licensing act 2003) or an authorised trading standards officer the local authority/council.

9.2 Prominent, clear and legible Challenge 25 signage shall also be displayed at all entrances to the premises as well as at, at least one location behind any counter advertising the scheme operated.

