

Western Area Licensing Sub Committee

MINUTES OF THE WESTERN AREA LICENSING SUB COMMITTEE MEETING HELD ON 20 OCTOBER 2021 AT ON-LINE MEETING.

Present:

Cllr David Bowler, Cllr Steve Bucknell (Chair) and Cllr Peter Hutton

Also Present:

Applicant

Lisa Gilligan – Freeths Solicitors on behalf of the Applicant

Those who made a relevant representation

Cllr Mike Kettleley on behalf of Westbury Town Council

Wiltshire Council

Lisa Alexander – Senior Democratic Services Officer

Emma Hyde - Public Protection Officer – Licensing

Sarah Marshall – Senior Solicitor

Lisa Pullin – Democratic Services Officer

1 Election of Chairman

Nominations for a Chairman of the Licensing Sub Committee were sought and it was

Resolved:

To elect Councillor Steve Bucknell Chairman for this meeting only.

2 Apologies for Absence/Substitutions

No apologies were received. There were no substitutions.

3 Procedure for the Meeting

The Chairman notified all those present at the meeting that it was being recorded and that the recording would be available on the Council's website for public viewing and that as indicated in the information within the Agenda pack, that images and sound recordings may also be used for training purposes within the Council.

The Chairman reminded those present that any speakers that wished to remain and make a statement to the Sub Committee would be giving consent and that

they would be recorded presenting this and that the meeting could also be recorded by the press or members of the public.

The Chairman then asked if anyone present wished to withdraw from the meeting. All parties confirmed they wished to remain in and take part in the Sub Committee.

The Chairman explained the procedure to be followed at the hearing, as contained within the "Wiltshire Licensing Committee Procedural Rules for the Hearing of Licensing Act 2003 Applications" (Pages 5 to 11 of the Agenda refers).

4 **Chairman's Announcements**

There were no announcements from the Chairman.

5 **Declarations of Interest**

There were no interests declared.

6 **Licensing Application**

Application by Aldi Stores Ltd for a Variation of a Premises Licence in respect of Aldi, 60-62 Warminster Road, Westbury

Licensing Officer's Submission

The Sub Committee gave consideration to a report (circulated with the Agenda) in which determination was sought for an application for a variation to a Premises Licence, presented by Emma Hyde (Public Protection Officer – Licensing) for which one relevant representation had been received. The application was to extend the timings for the following licensable activity and to accordingly amend the hours that the premises can open to the public from Monday to Sunday 06:00 to 00:00:

- Supply of Alcohol (ON and OFF sales) - Monday to Sunday from 06:00 to 00:00

Wiltshire Council (as the Licensing Authority) must hold a hearing to consider the application having regard to the representations. In accordance with Section 35(3) of The Licensing Act 2003, the Licensing Sub Committee is required to take such steps as it considers appropriate for the promotion of the four licensing objectives:

- The Prevention of Crime and Disorder;
- Public Safety;
- The Prevention of Public Nuisance; and
- The Protection of Children from Harm.

It was noted by the Sub Committee that there were three options available to them:

1. To grant the variation application, as applied for.
2. To grant the variation application, on the terms and conditions applied for, modified to such extent as considered appropriate to promote the Licensing Objectives.
3. To reject the whole or part of the variation application.

The Sub Committee also noted the following from the Public Protection Officer:

- After receiving the representation from Westbury Town Council, the Applicant made an offer to keep the terminal hour unchanged at 23:00 but seek to extend the licence for supply of alcohol (ON and OFF sales) to 07:00 – 23:00. However the party who made a representation was not satisfied with this offer and did not wish to withdraw their representation;
- In relation to shops, stores and supermarkets, the Guidance issued under Section 182 of the Licensing Act 2003 states:

10.13 'Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.'

- That the Applicant, and those who have made representations, may appeal the decision made by the Licensing Sub Committee to the Magistrates Court. The appeal must be lodged with the Magistrates Court within 21 days of the notification of the decision. In the event of an appeal being lodged, the decision made by the Licensing Sub Committee remains valid until any appeal is heard and any decision made by the Magistrates Court.

The following parties attended the hearing and took part in it:

On behalf of the Applicant

- Lisa Gilligan – Freeths Solicitors – Applicant's representative

Relevant Representations

- Cllr Mike Kettleby on behalf of Westbury Town Council in objection to the application

The Chair advised that the written representations had been read and considered by the members of the Sub Committee in advance of the meeting. The Chair then invited the Applicant's representative to introduce their application.

Applicant's submission

The Applicant's representative, Lisa Gilligan from Freeths Solicitors spoke in support of the application, highlighting the following points:

- There were 930 Aldi stores nationwide, currently 40% of those had trading hours of 08:00 to 23:00 and 20 % had trading hours of 06:00 to 00:00 so there was a programme to bring 400 of their stores which held older licences into a greater operating period by applying to extend the opening hours and therefore seeking an extension of the timings allowed for the supply of alcohol to the public to give the Applicants more operational flexibility;
- No local residents or Responsible Authorities had raised any issues of concern with the Responsible Authorities or had felt the need to submit a relevant representation. One relevant representation had been received from Westbury Town Council. The Applicants had offered the Town Council a compromise to amend the application for the timings of the supply of alcohol to 07:00 to 23:00 but this was not accepted by the Town Council and the offer was therefore withdrawn. The hours as per the original application were therefore sought by the Applicants at the hearing for consideration by the Sub Committee;
- During the Covid lockdown period and in the lead up to Christmas 2020 the stores had taken the opportunity to open from 07:00 to allow customers more time to come into the stores and to enable social distancing to take place. To enable this the Applicant had made use of temporary event notices (TENS) where appropriate. The Applicants were now seeking to have the extended opening times available to them on a permanent basis to be able to use when the business deemed it was operationally appropriate without the need to make frequent applications for TENS; and
- The Sunday trading legislation would of course remain in force and the store would only trade for the up to the six consecutive hours permitted.

Sub Committee Member's questions

In response to Members questions the following points of clarification were given:

- In response to a question about the Applicant's plans to fully utilise the extended hours if granted, the Applicant's representative confirmed that it was not the Applicant's intention to immediately revert to the full trading hours and it was planned that the extended hours would be used in the run up to Christmas and also have the flexibility to use the hours whenever the need occurred for the business without the need for a further variation to the licence or for the use of a Temporary Event Notice. The Applicant's representative highlighted that whilst the store is currently able to trade/open until 23:00 it had not made use of that on a permanent basis; and

- In response to a question about deliveries to the store, the Applicant's representative confirmed that there were no specialist/separate deliveries of alcohol as delivery of alcohol would be part of a normal main delivery as per the current delivery patterns and there would be no change to the timing or frequency of deliveries if the application was to be granted.

Questions from those who made a relevant representation

There were no questions to the Applicant from Westbury Town Council.

Submissions from those who made relevant representations

- The Town Council's representative reported that Town Council continued to object to the variation application based on the four licensing objectives;
- Prevention of public nuisance - It was highlighted that the premises are adjacent to residential properties and on the main road – the A350, which was already subject to heavy traffic and it was felt that any increase in traffic would cause a problem. The Town Council felt the extended licensing hours would interfere with the residents right to rest and relaxation and that the current licensing and opening hour of 08:00 was fairly acceptable to residents;
- The prevention of children from harm was a particular concern as there is a junior school within 500 yards of the premises and a that a new residential estate was being built to the east of property;
- The prevention of crime and disorder was also a concern as the Police have stated to the Town Council that the Police cover for late night incidents in the town is negligible and it was felt that this may potentially lead to a limited or no Police response to any late-night alcohol incidents occurring in the town; and
- Public safety - The premises are directly alongside the A350 which is a main thoroughfare from the Midlands to the South and carries heavy traffic. Any disturbances or alcohol related incidents could spill onto the A350 and as previously stated the Police cover for the town was negligible.

Sub Committee Members' questions

In response to Members questions the following points of clarification were given:

- In response to a question about the Town Council's evidence of crime and disorder associated with the premises, the Town Council representative reported that the Town Council had received reports from the local Police liaison officer which suggests a degree of disturbance

caused by excess alcohol consumption but accepted this was directly difficult to lay this at the door of any area of sales but there is a problem. A Sub Committee member highlighted the ability for the Town Council, other responsible authority, or member of the public to request a review of the licence of any premises causing problem and whilst the Town Council representative acknowledged this, he reported that it may be too late once trouble started to occur in the area. A Sub Committee member asked if the area was highly volatile to alcohol abuse disruption and the Town Council representative said the area is as is any area of the town.

- In response to a question about concerns on the increase in traffic demand the Town Council's representative reported that this related to both deliveries to the store and customers as the premises were on a busy main road. They felt that any increase in traffic in the mornings or evenings would cause an extra problem;
- In response to a question about the sale of alcohol the Town Council representative stated that their objection was that the sale of alcohol outside the normal hours of the cafes or pubs would be a problem;
- In response to a question about the proposed impact of the change of hours at the premises would have on the junior school and the school's opening hours the Town Council representative stated that the opening times would be the same as other primary schools and that there was also a senior school close to the premises which also had a high number of young people passing by and shopping at the premises;
- A Sub Committee member highlighted that currently the premises can open and serve alcohol from 08:00 and if the request to open the store at 06:00 was granted would the schools be open before 08:00? The Town Council representative stated the schools would not be open before 08:00 but reported that they would not be able to prevent early passing of the store and using the premises as it was a recognised thoroughfare used by those walking to the schools; and
- In response to a Sub Committee member's question about a Public Spaces Protection Order for the area in relation to alcohol related incidents; the Town Council representative confirmed that there was not a PSPO in place and no such plans for one to be applied for at the present time, however the Town Council were in regular communications with the Police and at Town Council meetings where they are told about disturbances in the area.

Questions from the Applicant:

In response to questions from the Applicant, the following points of clarification were given:

- In response to a question about any complaints or evidence of problems relating to Aldi when the premises had been opening earlier in the previous year or if it was a general issue in the area, the Town Council representative stated that it was difficult to lay the blame for any disturbance on Aldi, however as it was early in the morning and there were very few other establishments open selling alcohol that spoke for itself. The Town Council representative was not able to give any evidence or details of any issues related to Aldi and suggested that that would be a question for the Police. The Sub Committee informed the Town Council that the Police had not made a representation and were not in attendance at this hearing.

Closing submissions from those who made relevant representations

In their closing submission, the those that made a relevant representation in objection to the application highlighted the following:

- That whilst the Town Council had discussed in some detail the concessions made by the Applicants to slightly reduce the hours requested as part of their application the Town Council representative still did not feel there was any need for the extension of hours and supply of alcohol based on what had reported at the meeting and felt that the Applicants had not provided adequate reasons to extend their licence.

Applicant's closing submission

In their closing submission, Lisa Gilligan on behalf of the Applicant highlighted the following:

- The Applicant felt there was a need to request a change in hours, hence their application and the store had opened earlier over the last 12 months and this would achieve operational flexibility for the Applicant;
- If there had been more issues for residents or crime related to the premises then there would have been representations before the Sub Committee; and
- It was acknowledged that there was the potential for a new residential estate in future but if problems arose the review process could be initiated if and when there was evidence. At the present time there was no evidence and the Applicants wished for the Sub Committed to be conscious of the concessions made to the Town Council, they wished to confirm again that they were applying for timings as per the original application to cover the hours of 06:00 to 00:00.

Points of Clarification Requested by the Sub Committee

No points of clarification of the parties final submissions were requested by the Sub Committee.

The Sub Committee then adjourned at 12.07 and retired with the Senior Solicitor and the Democratic Services Officer to consider their determination on the licensing application.

The Hearing reconvened at 12.30.

The Senior Solicitor advised that she gave the following legal advice to the Sub Committee:

- Brief advice relating to the issue of the consideration of evidence.

Decision

The Western Area Licensing Sub Committee RESOLVED to GRANT the application for a Variation to a Premises Licence in respect of Aldi, 60-62 Warminster Road, Westbury to extend the licensable activity as detailed below:

Licensable Activities	Timings	Days
Supply of Alcohol (ON and OFF Sales)	Monday to Sunday	06:00 – 00:00
<i>Hours open to the public (please note that this is not a licensable activity)</i>	<i>Monday to Sunday</i>	<i>06:00 – 00:00</i>

Reasons

In reaching its decision the Sub Committee took account of and considered all the written evidence and representations from all parties and the oral submissions received on behalf of the Applicants and the Councillor who spoke to the representation made by Westbury Town Council.

The Sub Committee having heard the representations took the view that there were other licenced premises along Warminster Road close to the location of the premises but noted that the Town Council had not provided evidence of alcohol related incidents caused by alcohol purchased at the Applicant's premises nor had the Town Council felt that alcohol related incidents required an application for a Public Space Protection Order. No evidence had been provided regarding public nuisance or complaints arising from the increase in traffic to and from the premises during the extended opening hours which occurred during winter 2020/21. So far as the schools were concerned the Sub Committed noted that it was illegal to sell alcohol to children under 18 years and it was doubtful many (if any) children would seek to visit the premises at 06:00. The Sub Committee finally noted that no evidence of crime and disorder had

been provided to the Sub Committee and the Police did not make a representation.

The Sub Committee noted that if evidence of nuisance arose from the use of the premises for the licensable activities in future then it was open to any person (including Responsible Authorities) to request a review of the licence under the provisions of the Licensing Act 2003 and the matter would come back to the Sub Committee.

The Sub Committee also considered the relevant provisions of the Licensing Act 2003 (in particular Sections 4 and 18); the four Licensing Objectives; the guidance issued under Section 182 of the Act and the Licensing Policy of Wiltshire Council.

Right to Appeal

It should be noted that the Premises Licence Holder, any Responsible Authority(ies) and Interested Parties who have made representations may appeal the decision made by the Licensing Sub Committee to the Magistrates Court. The appeal must be lodged with the Magistrates Court within 21 days of the notification of the decision. In the event of an appeal being lodged, the decision made by the Licensing Sub Committee remains valid until any appeal is heard and any decision made by the Magistrates Court.

A Responsible Authority or an Interested Party may apply to the Licensing Authority for a Review of a Premises Licence. Whether or not a Review Hearing takes place is in the discretion of the Licensing Authority, but, if requested by an Interested Party will not normally be granted within the first 12 months except for the most compelling circumstances.

(Duration of meeting: 11.30 am - 12.35 pm)

The Officer who has produced these minutes is Lisa Pullin of Democratic Services,
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