

SOUTHERN AREA LICENSING SUB COMMITTEE

DRAFT MINUTES OF THE SOUTHERN AREA LICENSING SUB COMMITTEE MEETING HELD ON 16 MAY 2019 AT THE ENTERPRISE NETWORK, (THE OLD FIRE STATION), SALT LANE, SALISBURY, SP1 1DU IN RESPECT OF AN NEW APPLICATION - DURRINGTON

Present:

Cllr Leo Randall, Cllr John Smale and Cllr Ian Thorn (Chairman)

Also Present:

Hannah Hould, Licensing Officer
Sarah Marshall, Senior Legal Officer
Esther Bisgrove, Legal Officer (Observing)
Lisa Moore, Democratic Services
Graham Wright, Relevant Representation
David Healing, Durrington TC (Observing)
Robert Botkai – Applicant's Solicitor
Matt Fairbairn – Applicant's Area Manager
Julia Corbett – Salisbury Journal & Wiltshire Times

1 **Election of Chairman**

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

Resolved:

To elect Councillor Ian Thorn as Chairman for this meeting only.

2 **Apologies for Absence/Substitutions**

3 **Procedure for the Meeting**

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 1 – 6 of the Agenda refers).

4 **Chairman's Announcements**

The Chairman gave details of the exits to be used in the event of an emergency.

5 **Declarations of Interest**

There were no interests declared.

6 **Licensing Application**

Application by Malthouse Ltd for a Premises Licence at MRH Durrington, Larkhill Road, Durrington, Salisbury, SP4 8DP.

The Licensing Officer, Hannah Hould introduced the purpose and scope of the application, the premises to which it related and the key issues for consideration.

On 5th March 2019 an application for a new premises licence was received and accepted as a valid application.

The application was for Late night refreshment indoors and outdoors on Monday to Sunday from 23:00 – 05:00 hours, and Sale by retail of alcohol (Off Sales) on Monday to Sunday from 00:00 – 24:00 hours.

Details of two other licensed premises within the vicinity were provided.

During the consultation period one relevant representation was received from a local resident.

No representations had been received from a responsible authority.

In accordance with the procedure detailed in the agenda, the Applicant and those who had made a Relevant Representation were given the opportunity to address the Sub Committee.

It was clarified that the person who had made relevant representation was Mr Graham Wright, as a local resident of Durrington, and not in his capacity as local or ward Councillor. Accompanying him was Mr David Healing, a member of the Town Council, who was not speaking at the meeting.

Applicant

Key points raised by Robert Botkai and Matt Fairbairn of Malthouse Ltd on behalf of the Applicant were:

- The site was owned by MRH who had around 350 petrol stations. They merged with the Motorfuel Group and now had a combined empire of over 800 petrol stations, almost 150 of those were licensed 24hr stations. After MRH had merged with the Motorfuel Group senior members of staff (managers) were instructed to put in further applications for a further 160

sites held by the Company that either didn't have licenses or whose licences due to expire. In other licensing areas most of those applications for licences were approved with only those where residents objected proceeding to a hearing.

- They accept that even one objection results in a hearing unless that objection could be resolved and Mr Botkai did write to Mr Wright to see if the objection could be resolved but Mr Wright indicated that he did not wish to negotiate and hence the need for a hearing.
- Mr Wright spoke to Mr Botkai outside and stated that he would have no objection to the sale of alcohol during the hours of 0600 TO 2300 hrs but his only objection was to the night time hours after 2300 hrs . Currently the moment the garage operates 0600 TO 2300 hrs .
- The applicant applied for a 24hrs licence and it is important in their view to note that the officers, police, public health and fire, have not objected. If the Police did not object this shows that there had not been a history of nuisance at this site, otherwise they would have objected.
- The Government guidance states that shops should be able to sell alcohol during hours to match their trading hours. The Council's guidance (paragraph 6.3) also states that generally licence holders are able to sell alcohol for off sales (unless there are exceptional reasons) during the hours applied for. This would suggest that there would have to be exceptional circumstances to refuse the application.
- The Motorfuel Group have no imminent plans to increase the trading plans of the store. They are looking at where improvements can be made. Late night refreshment can cause some confusion but it is usually hot drinks and food to heat up perhaps and is all very low key (i.e. they are not going to turn into a fast food store). If the store is open through the night they would open a night pay window to serve and customers would not be able to enter the shop as the entrance door would be closed overnight.
- Through their applications, the Company regularly hear about the fear of terrible events that may occur if alcohol is served but what we see in practice those events are unlikely to occur but even if something of concern did arise, we would want residents to please contact us, so we can and will do something about it. If we did nothing, we know the failure to act would entail the matter being taken back to Committee for a review.
- One example was where there was a site with a 24h license, located next to a river and a particular group of people were using the store and drinking down by river. The neighbour contacted us, so the Company immediately changed the evening service hours for alcohol, with a gradual reintroduction whilst being monitored.

- The objector talks of a history of young people congregating but checks have been made and there have been no incidents here at all. It appears the concern is that the license would bring the potential for public nuisance at this location but if it does, he is welcome to contact us and we will do something about it.
- Any other concerns you have please let us know.

Questions from the Sub Committee;–

Cllr Smale – I am Ex military. There are local camps who may use this as a focal point to buy alcohol after 2300 hrs. Your statement has reduced my concerns as you will take action if any antisocial behaviour did arise. Will you keep it at 24hrs a day?

Applicant's response: The premises opens from 0600 TO 2300 hrs at the moment and they are not aware of any immediate plans to increase those hours. If there was investment in the future the Company may change the hours. Lots of petrol stations are closing around the country, those that do survive do have to become good shops and have investment.

Cllr Smale – So you are going for 24 hours to give flexibility

Applicant's response; Yes but there would need to be exceptional reasons. In reality it will be open 0600 TO 2300 hrs.

Cllr Thorn - You mentioned sustainability as a possible reason for increase in opening hours, how much of your income will come from fuel and how much from the shop?

Applicant's response : I do not have those figures as they are not relevant to the application. Petrol stations do rely heavily on the success of the shop.

Cllr Thorn – But you are making representations about the sustainability of the business.

Cllr Thorn – The plans before the Sub Committee show a Subway included, are you proposing a Subway?

Applicant's response : My understanding is, that if there as one, it would not be trading 24hrs. They are usually open 0700 to 2200 hrs (or 2100 hrs on a Sunday). The latest plan does not have a subway on site. We will have a costa coffee machine and pies and pasties which can be baked on site. We would need to put in a minor variation if the Company's plan was to have Subway on the premises.

Cllr Thorn – You mentioned that if you extend the trade beyond the current hours there is a hatch which would be used at night, instead of the door. Is that hatch already in place?

Applicant's response : Yes it is there now.

1. Questions from Mr Graham Wright who made the Representation; Is this a Malthouse Ltd application?
Applicant's response : Yes. Malthouse still exists.
2. You could be selling fuel between 2300 to 0500 hrs , at the same time you would potentially be selling coffee, hot food and alcohol as well, where will people park when they are drinking coffee?
Applicant's response : I do you not see this as a problem for people pulling up and parking? We are not the only station with 24hr, BP & M&S are all 24hr, there has not been any evidence of pulling onto forecourt to buy both.
3. You don't have specific parking facility for the customers who want to park for coffee.
Applicant's response : It is very unlikely that there would be enough trade at night for the car park to be overcrowded with parked vehicles. However if we found an issue we would deal with that.
4. The application says about the Subway, you did not spot that. On the plan submitted how many seating arrangements for people, as there seems a lot of spaces?
Applicant's response : I asked the Head Office about subway. The shop doors are not open at night and Subway usually does not open at night. There is a standard condition that can be applied that relates to the night sales, and night pay window that we would be happy with including. In addition, the coffee machine is inside but the consumption is off site. The shop entrance door will be closed to customers 0600 TO 2300 hrs .
5. Planning matter raised by Mr Wright and Cllr Thorn was informed by the Council's Solicitor that planning matters cannot be considered by the sub committee.
6. Your planned CCTV coverage, will that cover the shared forecourt of the Esso garage?
Applicant's response : We have a full digital CCTV system and the Police have confirmed that they are satisfied. We cannot cover someone else's premises.

I had a question on staff numbers, but as you have confirmed the serving hatch arrangement for nights, you have covered that. You plan to have adequate waste receptacles but what other actions are you taking?

Applicant's response : We do not want to provide lots of facilities on the forecourt to encourage customers to sit and consume what they have purchased. The bins are there to encourage waste handling. What else would you like us to do?

7. When I sent my objection in I made it clear that I was a resident. When the applicant made contact with me it was via my WC email and not my

personal email. So I was reluctant to engage. I have also been away for a week.

8. Appreciate you will enforce the under 25 rule. But there could be a situation where older people will buy drinks for people under age. What will you do to tackle that?

Applicant's response : These are called proxy sales, and the issue of that applies to us as much as it does to Tesco, part of the training of our staff is in proxy sales and how to be observant. However if an adult goes to purchase alcohol and takes it away and gives to someone else we cannot monitor that.

Relevant Representations

Key points raised by those who made a Relevant Representation – Mr Graham Wright were:

- I objected as a resident of Durrington, on the grounds of the proposed hours of 24hrs a day 365 days a year, when no other outlet can do the same in Durrington.
- This will bring potential for public nuisance and anti-social behaviour.
- There are associated public safety issue of having off sales 24hrs.
- The garage next door is secluded and would be an ideal place to have a drink and a chat.
- Common sense is that there should be a restriction on the licensing hours of sales of alcohol.
- With the suggestion of the Subway also open 24hrs.
- Durrington TC on behalf of residents had a public meeting to discuss the matter.
- Durrington TC made a rep and it was rejected.
- Complaints from residents do not exist as the garage is not currently open 24/7.
- There was a DPPO that was put in place some time ago. We have concerns with cars driving round the community.

Cllr questions

None.

Questions from the applicant.

None.

Summary

Mr Graham Wright – Relevant Representation

We hear from the applicant that they intend to maximise on business, have they considered the impact on sleepy Durrington village? Up until now it has been relatively safe. The village does not wish this application to be the reason for a recurrence of antisocial behaviour. Would it be sensible for their opening hours to run as the other licensing premises.

Robert Botkai – for the Applicant

Good to hear there have been no complaints with the current opening hours. No reference in the papers to a previous DPPO and we do not know the relevance of that. We would expect the Police to have made reference to crime and disorder and they have not done so. Good to hear the area is quiet and safe and we do not expect that to change if the license is granted. If any issues arise we would be happy for Mr Wright to contact us. We would investigate. During the 28-day consultation period I did try to make contact with Mr Wright, to make some assurances.

We ask for the license to be granted as applied for with the added condition of the night pay window as stated earlier. If there was a Subway it would have limited hours. Late night refreshment would be mainly hot drinks and snacks.

The Sub Committee members sought clarification on some points before retiring to consider the application and were accompanied by the Senior Solicitor for the Council and the Democratic Services Officer.

The Sub Committee then retired to consider the application at 10.52am

The Hearing reconvened at 11.15

Following the deliberations of the Sub Committee Members, the Solicitor for the Council made a statement of material legal advice given in closed session as follows:

Brief legal advice was provided to the sub committee in relation to the wording of the condition concerning the entrance door being closed to customers between 2300 hrs and 0600 hrs to be applied to the License. There were no additional comments from the applicant's solicitor and Mr Wright.

The Sub Committee considered all of the submissions made to it and the written representations together with the Licensing Act 2003, Statutory Guidance and Regulations and the Licensing Policy of the Council

Resolved:

That the Application for a Premises Licence at MRH Durrington be granted as applied for and detailed below and subject to the conditions as listed:

Licensable Activity	Days	Timings
Late night refreshment	Monday-Sunday	23:00hrs-

(Indoors & Outdoors)		05:00hrs
Sale by retail of alcohol (OFF Sales)	Monday-Sunday	00:00hrs- 24:00hrs

Condition:

- 1. The entrance door to the shop will be closed to customer between 23:00hrs and 06:00hrs. Any sales between these hours will be made through the night payment window.**

Reasons:

The Sub-Committee have considered the relevant provisions of the Licensing Act 2003 (in particular Sections 4 and 18) and the guidance issued under Section 182 of the Act.

The Sub-Committee have considered the written evidence presented in the agenda, together with the oral evidence given at the hearing from the Applicant, and those that made relevant representations.

The Sub-Committee was mindful of the concerns expressed at the hearing, relating to an expectation of antisocial behaviour if the licence was granted. However it noted that there was no evidence of any historical antisocial behaviour associated with the premises in the past, and there had been no objections from the Responsible Authorities. The Panel also noted the assurance of the Applicant's representative to deal with any such incidents should they arise.

7 **Report**

8 **Appendix 1 - Application Form**

9 **Appendix 2 - Site Plan**

10 **Appendix 3 - Relevant representation**

11 **Appendix 4 - Location Plan**

(Duration of meeting: 10.00 - 11.25 am)

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