

GUILDFORD BOROUGH COUNCIL

LICENSING ACT 2003 RECORD OF HEARING AND DECISION TAKEN BY THE LICENSING SUB-COMMITTEE	
DATE OF HEARING	Wednesday, 30 September 2015
SUB-COMMITTEE MEMBERS PRESENT:	Councillor David Elms (Chairman) Councillor David Goodwin Councillor Mike Parsons
OFFICERS PRESENT:	Mark Adams (Licensing Compliance Officer) Carolyn Anderson (Committee Manager) (observing) Sophie Butcher (Committee Manager) James Dearling (Committee Manager) (observing) Raj Devandran (Lawyer Litigation & Corporate) Justine Fuller (Environmental Health Manager) (observing)
DISCLOSURES OF INTEREST BY MEMBERS PRESENT:	None
PREMISES:	Shell Horsley, Guildford Road, East Horsley, Leatherhead, Surrey, KT24 6TA
TYPE OF APPLICATION:	The premises is a service station located on the A246 in East Horsley. The application had 4 proposals to vary the licence, however the applicant had since withdrawn proposals 1 and 2. Therefore, the only proposals to consider, were 3 and 4, as detailed below: 1. Extend the sale of alcohol to 24 hours a day, 7 days a week 2. Add the provision of late night refreshment from 23:00 to 05:00 hours 7 days a week 3. to extend the current footprint and change the internal layout of the premises and; 4. to remove the conditions listed under Annex C (Permitted hours - Sale of Alcohol) on the current premises licence.
DETAILS OF APPLICATION SOUGHT:	Application for the variation of a Premises Licence, number GUPLA0201
APPLICANT:	Shell UK Oil Products Limited, Shell Centre, London, SE1 7NA Mr Corrigan Lockett of Lockett & Co Licensing Consultants, Kidderminster Mr Roy Light (Barrister) (on behalf of Shell UK) of St John's Chambers, Bristol
OTHER PERSONS:	The following people made verbal representations (and on behalf of local residents both present and unable to attend the hearing): Mrs Ann Cook Mr Armstrong-Flemming Mr Phil Markley (on behalf of local residents) Councillor David Reeve (on behalf of Mr and Mrs Bruton)

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	Mr Peter Warburton Councillor Jenny Wicks
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DETAILS OF DECISION TAKEN:

The Sub-Committee considered the variation of a premises licence number GUPLA0201. The Sub-Committee also considered the relevant sections of the Council's Licensing Policy and the National Guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003 (as amended).

The Chairman confirmed that the application had been modified, and the following proposals withdrawn:

1. Extend the sale of alcohol to 24 hours a day, 7 days a week
2. Add the provision of late night refreshment from 23:00 to 05:00 hours 7 days a week

The Chairman confirmed that for those people wishing to speak, Proposals 1 and 2 may have been the focus of their objections. Since the Sub-Committee would not be considering these matters the Chairman would only accept speakers who were addressing Proposals 3 and 4.

The Chairman also explained that Planning and Licensing sat entirely separately and it was possible for a licence to be awarded without planning permission. The application that the Sub-Committee were considering had been submitted under Licensing legislation. Should there be any aspects required to be considered under Planning legislation it was for the applicant to submit a planning application.

The Licensing Compliance Officer advised that, a variation of a premises licence GUPLA0201 Shell Service Station, Horsley located on the A246 was sought to:

3. To extend the current footprint and change the internal layout of the premises and;
4. to remove the conditions listed under Annex C (Permitted hours - Sale of Alcohol) on the current premises licence.

The premises is located close to residential properties, a hotel, and a public house. The applicant had proposed the removal of conditions listed in Annex C on page 4 of the licence. These conditions were carried across on the conversion of the Justice's Licence in November 2005. The second proposal was to vary the authorised plan of the premises from the plan dated September 2013 to the plan dated August 2015. The Planning department at Guildford Borough Council had confirmed that the current planning permission for the site restricted the hours of opening from 7am to 10pm Monday to Saturday and 9am to 8pm Sundays. These restrictions did not affect the determination of this application, but the applicant would need to apply for planning permission to operate outside these hours. Planning permission may also be required to change the layout of the indoor area.

The Licensing Compliance Officer also advised that a total of 130 representations had been received from other persons, mainly on the grounds of prevention of public nuisance. It was important to note that some of the representations referred to planning permission, impact on

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local businesses and demand, none of which were relevant considerations in determining a licensing application. The Sub-Committee noted that the applicant was not required to show a need for the business for the purposes of determining a licensing application.

Some representations had referred to public safety issues and anti-social behaviour once patrons had left the site. Home Office guidance stated that public safety related to the safety of customers whilst they were on the premises. Representations made in relation to members of the public having difficulties entering or exiting the site was a planning issue and did not engage Home Office guidance. The Sub-Committee also noted that the applicant had complied with the statutory requirements to advertise the application. The procedure did not require residents within 500 yards of the site to be notified by post.

The Council's lawyer, Mr Devandran, reminded the Sub-Committee that Planning and Licensing legislation sat separately from each other.

The Chairman stated that as no representations had been received from the Responsible Authorities, the applicant's barrister was therefore invited to make his representation, in support of the variation application.

The applicant's Barrister, Mr Roy Light, made the following submissions in support of his client's representation:

- it was hoped that the withdrawal of proposals one (to extend the sale of alcohol to 24 hours a day, 7 days a week) and two (to add the provision of late night refreshment from 23:00 to 05:00 hours 7 days a week) had addressed the main bulk of representations received;
- referred the Sub-Committee to the original plan on page 15 of the agenda pack by comparison to the proposed plan shown on page 31. No change to the building size was proposed. The changes sought related to the internal layout only, whereby the premises was being refurbished and refitted to make provision for additional sales area;
- the premises already had an alcohol licence. The proposal was to remove the conditions as detailed on page 12 of the agenda pack, as follows as they were now obsolete and out of date:

- **C: Permitted hours-Sale of Alcohol**

Alcohol shall not be sold or supplied except during permitted hours. In this condition, permitted hours means:

- a) On weekdays, ~~other than Christmas Day~~, 8am to 11pm
- b) On Sundays, ~~other than Christmas Day~~, 10am to 10:30pm
- c) ~~On Christmas Day, 12 noon to 3pm and 7pm to 10:30pm~~
- d) ~~On Good Friday, 8am to 10:30pm~~

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~~The above restrictions do not prohibit:~~

- a) ~~During the first twenty minutes after the above hours, the taking of the alcohol from the premises, unless the alcohol is supplied or taken in an open vessel;~~
- b) ~~The ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;~~
- c) ~~The sale of alcohol to a trader or club for the purposes of the trade or club;~~
- d) ~~The sale or supply of alcohol for any canteen or mess, being a canteen in which the sale of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces.~~

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- There were no objections to the change of hours in Proposal 4. None of the responsible authorities had made any representations. The established convenience store had been trading under Shell UK Oil Products Limited since 2012. The convenience store was responsibly managed. A fully accredited and trained Designated Premises Supervisor (DPS) was in place and responsible for ensuring completed training records. In addition, refusal logs were kept and daily litter picks carried out.

The Sub-Committee heard the submissions from the following other persons:

Councillor Jenny Wicks (on behalf of local residents):

- the original application had caused enormous concern in relation to the extension of hours for the sale of alcohol and the premises' close proximity to the homes of local residents. The hours should be restricted. The premises could stay open one hour longer than permitted by planning permission. Councillor Wicks called upon the Sub-Committee to consider harmonising the hours as the difference could cause confusion;
- issues of light and noise pollution was a matter for planning;
- expressed concern that the applicant had not checked whether they needed planning permission to alter the footprint of the premises and urged them to check and clarify;
- was glad that the proposal for 24/7 provision of alcohol and hot food had been withdrawn.

Mr Markley (on behalf of local residents Mr & Mrs Kirk, George Lines, Bob and Marlene, Yvonne and Russ, Phil and Sue Monks and other residents both in attendance and not able to attend):

- was upset that he was unable to address proposals one and two as part of his verbal representation. Given the strength of local feeling and the amount of work undertaken over the last six weeks, Mr Markley requested that he be permitted to speak in relation to proposals one and two. Mr Markley stated that he was only told today that he could not address the withdrawn proposals.

The Chairman recognised the strength of feeling created by the original application and permitted Mr Markley to refer to proposals one and two. The Sub-Committee was unable to take these matters into consideration, given that both proposals had now been withdrawn. Mr Markley continued:

- the notice given to local residents by way of a small note in the doorway of the Shell premises was inadequate and not easily observed;
- Shell UK was an honourable company but this application had not been dealt with appropriately;
- Mr Markley lived directly behind the premises and the proposals in relation to the extension of hours for the sale of alcohol and the provision of late night refreshments would make life intolerable;
- both he and his wife suffered with a heart condition. The proposed extension of hours would therefore interfere with their much needed rest. The Human Rights Act entitled everyone to the peaceful enjoyment of their possessions;

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- Mr Markley referred the Sub-Committee to Kingston Borough Council, in consideration of a similar licensing matter, whereby a holistic approach was adopted in relation to licensing and planning matters whilst still adhering to the licensing law.
- unrealistic to assume that underage children would not be drinking. Staff on the premises were likely to have their own safety threatened;
- referred the Sub-Committee to a picture circulated showing a brick wall which had been knocked down by a driver entering the Shell premises at 2am.
- Surrey Police force were over-worked and unlikely to be able to respond in time in to potential drink related crimes. Referred the Sub-Committee to an article in the Daily Mail in relation to a similar incident.
- referred to 130 representations being received when in fact thousands of representations had been received not hundreds, as some were made by societies with large numbers of members. Each valid representation was taken as one representation, regardless of how many people it represented.
- The variation application was made in August when people were generally away on holiday.
- today's hearing being scheduled at 10am on a weekday was also problematic for those people who had made representations and were unable to attend due to work;
- the notice of the variation application had been put at the front of the site, however, the premises was closed for the bulk of the 28 day notice period which limited the opportunity for local residents to be notified adequately;
- the application was not correct in that the opening hours were restricted, Bank Holiday opening hours were restricted as per Sundays.
- the Surrey Advertiser had stated that the premises was open 24 hours a day which again was incorrect and information given to the public confusing. There had been other references to Shell being open 24 hours a day, which was not true in the case of East Horsley – the applicant was making untrue statements to the public.
- the site was primarily a petrol garage. Shell's variation application sells site as a convenience store, which was an aspiration;
- the sub-Committee had a duty to note the concerns of local residents who shouldn't be ignored.

Councillor David Goodwin, sub-committee member, requested that the Licensing Compliance Officer clarified the procedure followed as required by licensing legislation, to advertise a variation application:

- The Licensing Compliance Officer stated that every application required a 28 day consultation period starting the day after an application is approved as valid. Notices should be displayed on A4, on the site of the premises in question, and advertised in a local newspaper within 10 days, which in Guildford's case is the Surrey Advertiser. A redacted copy of the notice was also put on the Guildford Borough Council website. All representations received are reviewed in relation to the four licensing objectives. There was no requirement for residents to be notified by letter. The applicant also sends a notice to the relevant responsible authorities.

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Mr Warburton made the following representation:

- very pleased that Shell UK had withdrawn proposals one and two. He claimed that this was sometimes a tactic employed by big companies to withdraw and then re-submit another variation application. Warned applicant that this will not be welcomed by the local residents.

Mr Armstrong-Flemming made the following representation:

- requested clarification in relation to the guidance referred to on page 4 of the agenda. Specifically, what constituted 'immediate area' when considering the following 'the guidance also makes it clear that anti-social behaviour beyond the immediate area surrounding the premises is a matter of personal responsibility of the individuals concerned.' Mr Armstrong-Flemming lived 100 yards away from the premises and considered that he was therefore located in the immediate area where anti-social behaviour could potentially take place.
- commented that at page 24 of the bundle the opening hours were untrue. He asked the Shell representatives why they had "lied". The Chair noted his comments.

Mrs Ann Cook made the following representation:

- the garage was situated in the middle of a residential area whose residents would suffer for noise and light pollution created by the proposals one and two;
- the road was dangerous and located on two blind bends. There have been several accidents where cars miss the bends;
- Licensing policies need to be updated.

Councillor David Reeves made the following representation:

- required clarification about the conditions listed under Annex C, as the original application was to have them deleted in their entirety, however the late sheet indicated that (a) and (b) were to stay in place, with the exception of references to Christmas and Good Friday;
- the conditions were unopposed because they were not part of the original variation application. The public had only been made aware of the amended proposal recently;
- proposed that the conditions be left in so that the applicant, if they wished, can re-apply for their removal and the residents can have proper time to consider the proposal.

The Council's lawyer, Mr Devandran confirmed that the conditions detailed in Annex C were carried across on the conversion of the Justices' Licence in November 2005. These conditions were no longer mandatory. It was also confirmed that the hours of opening would remain as per the current planning permission. The applicant would need to apply for planning permission to operate outside these hours.

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Having considered the application, the submissions from the applicant's barrister and those residents who had made verbal representations, the Sub-Committee

RESOLVED: That the variation application be granted in relation to proposals;

3. to extend the current footprint and change the internal layout of the premises (please see Appendix 1) and;

4. to remove the conditions listed under Annex C (Permitted hours - Sale of Alcohol) on the current premises licence, apart from the retention of points a and b and the removal of reference to Christmas day in both instances:

- **C: Permitted hours-Sale of Alcohol**

Alcohol shall not be sold or supplied except during permitted hours. In this condition, permitted hours means:

- a) On weekdays, ~~other than Christmas Day~~, 8am to 11pm
- b) On Sundays, ~~other than Christmas Day~~, 10am to 10:30pm
- c) ~~On Christmas Day, 12 noon to 3pm and 7pm to 10:30pm~~
- d) ~~On Good Friday, 8am to 10:30pm~~

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~~The above restrictions do not prohibit:~~

- e) ~~During the first twenty minutes after the above hours, the taking of the alcohol from the premises, unless the alcohol is supplied or taken in an open vessel;~~
- f) ~~The ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;~~
- g) ~~The sale of alcohol to a trader or club for the purposes of the trade or club;~~
- h) ~~The sale or supply of alcohol for any canteen or mess, being a canteen in which the sale of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces.~~

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REASON FOR DECISION:

In reaching their decision to grant the application subject to the above conditions, the Sub-Committee considered both written and oral representations from the applicant, residents and ward councillors.

The Sub-Committee was mindful of the significant concern that the original application had caused to local residents and was sympathetic to the anguish it had caused. However, given that proposals; 1. To extend the sale of alcohol to 24 hours a day, 7 days a week and 2. add the provision of late night refreshment from 23:00 to 05:00 hours 7 days a week had now been withdrawn, the Sub-Committee was satisfied that the potential for public nuisance and crime and disorder was therefore removed. The Sub-Committee therefore agreed that the licensing objectives in this respect had not been engaged.

The Sub-Committee was satisfied, given that no change to the physical size of the building was proposed, proposal 3 was not contentious as it only related to making internal layout improvements to the spacing of the gondolas. The purpose of the refurbishment works was to facilitate a more pleasant and customer-friendly shopping experience. The Sub-Committee was satisfied that the amended footprint was intended to reflect changes to the internal layout of the site and exclude inappropriate areas that had initially been included, such as the electricity station.

In relation to the removal of conditions detailed in Annex C, the Sub-Committee considered that there was no material change between the original application and the application as amended. The applicant's considered intention was for the opening hours on Christmas Day and Good Friday to be brought in line with the applicant's standard Sunday operating hours for this site.

Signature of Chairman:

Dated: