

GUILDFORD BOROUGH COUNCIL

LICENSING ACT 2003 RECORD OF HEARING AND DECISION TAKEN BY THE LICENSING SUB-COMMITTEE	
DATE OF HEARING	Monday, 30 April 2018
SUB-COMMITTEE MEMBERS PRESENT:	Councillor Mike Parsons (Chairman) Councillor David Elms Councillor David Quelch
OFFICERS PRESENT:	Mark Adams (Licensing Officer) Sophie Butcher (Committee Officer) Andrea Carr (Committee Officer) (observing) Bridget Peplow (Senior Lawyer Litigation) Mike Smith (Licensing Team Leader) (observing)
DISCLOSURES OF INTEREST BY MEMBERS PRESENT:	None by members of the Sub-Committee. Councillor Graham Ellwood declared that he had a personal interest and was speaking in his capacity as a resident/Ward Councillor having made a relevant representation.
PREMISES:	BP Service Station, 213 Epsom Road, Merrow, Guildford
TYPE OF APPLICATION:	Application to vary a Premises Licence – GUPLA0114
DETAILS OF APPLICATION SOUGHT:	The application was to extend the period allowing the sale of alcohol, for consumption off the premises to 24hours, 7 days a week and the provision for late night refreshment between the hours of 2300 and 0500, 7 days a week. Further remove embedded restrictions in the licence and then add new conditions as set out in the application.
APPLICANT:	BP Oil UK Limited
OTHER PERSONS:	Ms Denise Hilton

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DETAILS OF DECISION TAKEN AND REASONS THEREFORE:

In arriving at its decision, the Sub-Committee took into account the relevant representations submitted verbally and in writing. The Sub-Committee was also made aware that the following were relevant:

Guildford Borough Council's Statement of Licensing Policy

- Section 4 – (Fundamental Principles)
- Section 11 – 11.1 – 11.8 (Licensing Hours)
- Section 12: 12.2.1 – 12.2.14 – (Crime and Disorder)
- Section 12: 12.4.1 – 12.4.6 (Public Nuisance)
- Section 13 – (Licence Conditions)

National Guidance Issued on 6 April 2017 by the Secretary of State under Section 182 of the Licensing Act 2003:

- Paragraphs 2.1 – 2.6 – Crime and Disorder
- Paragraphs 2.15 – 2.21 – Public Nuisance
- Paragraphs 9.31 - 9.41 – Hearings
- Paragraphs 9.42 - 9.44 – Determining actions that are appropriate for the promotion of the licensing objectives
- Paragraphs 10.1-10.66 – Conditions attached to premises licences, which includes mandatory conditions to be included in every licence

The Sub-Committee heard from the Licensing Officer that the application was to vary the current premises licence of a Service Station and M&S general store based in Merrow, Guildford. The application was to extend the period allowing the sale of alcohol, for consumption off the premises to 24 hours, 7 days a week and the provision for late night refreshment between the hours of 2300 and 0500, 7 days a week.

The premises were located in an area with a mix of commercial, retail and residential properties. The Service Station already had a Premises Licence to allow the sale of alcohol until 2300 hours, Monday to Saturday and 2230 hours on Sunday. A public consultation had been held from March – April 2018 and advertised in accordance with regulations. One objection had been received from Environmental Health who were concerned about the car park's vicinity to local residential houses and the potential for public nuisance. This objection had since been withdrawn owing to Environmental Health agreeing with the applicant that a CCTV camera would be installed in the car park. Six letters of objections had been received, two from local Councillors and four from members of the public, primarily on the grounds of the prevention of crime and disorder and public nuisance. The concerns were that the sale of alcohol and availability of hot food after 2300 hours would increase the likelihood of crime and disorder as well as having the potential to generate noise and litter from the customers.

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The Sub-Committee was reminded that the need for an outlet selling alcohol and/or late night refreshments in the local area was not a relevant licensing consideration. The Sub-Committee also noted that they must consider the application for the grant of a premises licence on its merits. Having regard to the relevant representations received, the Sub-Committee must take such steps (if any) as it considered appropriate for the promotion of the licensing objectives.

The Chairman invited the applicant's solicitor to address the Sub-Committee. He made the following points:

- The existing store was very successful and had operated under a 1964 Premises Licence, which had not been updated since the introduction of the Licensing Act 2003.
- Currently there was no provision to sell coffee beyond 11pm and therefore the application to vary the licence would enable the provision of hot drinks and hot food from 11pm – 5am.
- Surrey Police visited the store approximately 5-6 times a night and would benefit from being able to buy hot coffee or snacks. The BP Service Station welcomed Surrey Police visiting them and therefore wished to facilitate their presence at the store.
- The provision of hot food would be more limited at night than during the day, but the provision of hot drinks was deemed more important. There was no evidence this would impact the licensing objectives.
- As per the Home Office guidance, shops should normally be free to sell alcohol when the premises were open unless there was a good reason to restrict the sale of alcohol.
- BP Oil UK Limited were trialling 30 stores to sell alcohol throughout the night. To date no anti-social behaviour or criminal activities had occurred in relation to this trial, but this would continue to be monitored. Local residents were often fearful that a public nuisance would be caused but it had not proved to be the case.
- It was important to note that Surrey Police had not made a representation and were satisfied that the application to vary the Premises Licence to extend the hours in which alcohol could be sold would not give rise to incidents of crime or public disorder.
- Environmental Health had submitted a representation in relation to the potential for public nuisance being caused in the BP Service Station carpark, which was located close to residential properties. The applicant had since confirmed that they would install a CCTV camera which Environmental Health was satisfied with and had since withdrawn their objection.
- The store operated Challenge 25 and CCTV instore.
- Staff were trained in licensing laws.
- 2-3 members of staff were in the store on any given night and the doors were kept closed so the staff could decide which customers to let in.
- To date, the manager of the store had confirmed that they had experienced no problems with youths gathering or drunks in the store.
- In relation to the representation made by Councillor Jenny Jordan, concerns had been raised about the availability of alcohol at the store, which could encourage pub goers to come into the premises after hours and behave in a disorderly manner. The solicitor confirmed that this was not a pattern of behaviour that had occurred in any other store and if such problems did occur, the premises would simply stop selling alcohol.
- Concerned residents were encouraged to contact BP with any problems should they arise and had the ability to call a review of the licence if their concerns were not resolved.

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- In relation to the representation made by Councillor Graham Ellwood, it was stated that the application contravened the basic tenets of any Licensing application. This was not true and a number of other companies held well over 200 similar late night licences.
- There was a general misconception that the sale of alcohol would cause more noise. When people purchased alcohol as part of their shop, it was no more noise inducing than any other item purchased. There had been no noise complaints about the store.
- The applicant understood the residents' concerns regarding the potential for drunken behaviour; however, there was no evidence to suggest that public disorder had been an issue to date in Merrow and no evidence that 24-hour licences attract lots of people to a store. The representations did not go far enough in terms of evidence.
- One of the representations concerned the congregation of youths in the Methodist church car park currently, but no evidence had been provided to substantiate this. The applicant was not aware of any such problems. Nor was there evidence that youths would travel to the area to purchase alcohol late at night and cause a nuisance.
- The solicitor confirmed that he did not expect a problem to occur but if it did, a review could be brought.

In response to questions raised by the Sub-Committee, the applicant's solicitor confirmed that:

- Wild Bean was BP's brand name for their coffee. In addition, a limited offer of hot food snacks would be served at night. No seating was available.
- Some customers purely used the M&S Store for their shopping rather than to purchase petrol or diesel.
- Environmental Health was satisfied that subject to the installation of a CCTV camera in the car park, residential amenities would be satisfactorily protected.

The Chairman invited Councillor Graham Ellwood to address the Sub-Committee:

- He stated he did not understand why M&S needed to sell alcohol at 3am in the morning.
- Local residents were concerned that people would go to Domino's late at night and then purchase alcohol. As there was no seating provided there was the potential for anti-social behaviour to be caused outside as people get louder when they drink
- He agreed that there was no evidence to prove that anti-social behaviour would happen. There could not be because the licence was not in existence, and he did not want to have the premises licence hours extended and then experience problems as a result of it.
- He was most concerned about the sale of alcohol late at night. The provision of alcohol late at night 24/7 was likely to increase drunkenness, anti-social behaviour and littering.
- He confirmed that he did not have an issue in relation to the sale of late night refreshment.

The Licensing Officer confirmed that he had nothing to add in relation to what had been said.

The applicant's solicitor was invited to sum up and stated the following:

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- There was no evidence to support the concerns raised by local residents about anti-social behaviour being caused by the proposed extension of hours in which to sell alcohol at the M&S Store in Merrow.
- Such fears as were expressed by local residents would be better substantiated had the M&S Store not previously had a licence. However, currently the M&S Store in Merrow was already licenced to sell alcohol until 11pm and no problems had occurred.
- No anti-social problems had been experienced with customers of Domino's Pizza.
- The M&S Store in Merrow was quiet.
- Should any problems occur, residents should inform BP as soon as possible and swift action would be taken.

The Council's Lawyer confirmed that the Sub-Committee had to bear in mind, in accordance with the Home Office guidance that shops should be free to sell alcohol during their opening hours unless there were good reasons for restricting this.

Having considered the application and the submissions from the applicant as well as the relevant representations, the Sub-Committee;

RESOLVED: That the application to vary the current premises licence to extend the period allowing the sale of alcohol, for consumption off the premises to 24hrs, 7 days a week and the provision of late night refreshment between the hours of 2300 and 0500, 7 days a week, for BP Service Station, 213 Epsom Road, Merrow, Guildford be granted as follows:

The following licensable activities and hours apply:

Activities	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Sale of alcohol							
For consumption <u>off</u> the premises	24hrs	24hrs	24hrs	24hrs	24hrs	24hrs	24hrs
Late Night Refreshment							
For consumption <u>off</u> the premises	23:00 – 05:00	23:00 – 05:00	23:00 – 05:00	23:00 – 05:00	23:00 – 05:00	23:00 – 05:00	23:00 – 05:00
Times premises are open to the public							
	24hrs	24hrs	24hrs	24hrs	24hrs	24hrs	24hrs

The embedded restrictions in the licence for the sale of alcohol as follows would be removed:

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Monday to Saturday:	0800 to 2300
Sundays (other than Christmas Day):	1000 to 2230
Good Friday:	0800 to 2230
Christmas Day:	1200 to 1500 and 1900 to 2230

The following new conditions would be added:

1. A digital CCTV system shall be installed, or the existing system maintained, such system to be fit for the purpose.
2. The CCTV system shall be capable of producing immediate copies on site. Copies of recordings shall be recorded digitally on to CD/DVD or other equivalent medium.
3. Any recording shall be retained and stored in a suitable and secure manner for a minimum of 31 days and shall be made available, subject to compliance with Data Protection legislation, to the police for inspection on request.
4. The precise positions of the cameras shall be agreed, subject to compliance with Data Protection legislation, with the police from time to time.
5. The system shall display, on any recording, the correct time and date of the recording.
6. The CCTV system shall be maintained and fully operational throughout the hours that the premises are open for any licensable activity.
7. A camera or cameras will be positioned so as to cover the store car park to the rear of the premises.

c) Public Safety

The premises licence holder shall at all times maintain adequate levels of staff. Such staff levels shall be disclosed, on request, to the licensing authority and police.

d) The prevention of public nuisance

Adequate waste receptacles for use by customers shall be provided in and immediately outside the premises.

e) The protection of children from harm

The premises licence holder shall ensure that an age verification policy will apply to the premises whereby all cashiers will be trained to ask any customer attempting to purchase alcohol, who appears to be under the age of 25 years (or older if the licence holder so elects) to produce,

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before being sold alcohol, identification being a passport or photocard driving licence bearing a holographic mark or other form of identification that complies with any mandatory condition that may apply to this licence.

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 and interested parties.

The Sub-Committee was mindful of the concern that the application had caused to local residents and was sympathetic. However, there was no evidence to suggest that by permitting the sale of alcohol 24/7, an increase in crime and disorder or public nuisance was likely to occur and an inextricable link had to be proven. There was no evidence that the existing alcohol sales had led to any problems of crime and disorder or nuisance. The Sub-Committee therefore agreed that the licensing objectives in this respect had not been engaged. The Sub-Committee noted that there was no objection to the provision of late night refreshment, which would be limited to hot drinks and snacks. The Sub-Committee was satisfied that should crime and disorder or nuisance occur that was directly associated with the sale of alcohol from the M&S Store, a review of the licence could be called for.

Signature of Chairman:

Dated: