

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-committee held on Monday, 6 January 2020 at 10.00 am in the executive meeting room, floor 3 of the Guildhall, Portsmouth

Present

Councillors Scott Payter-Harris
John Ferrett
Leo Madden

1. Appointment of Chair

Councillor Scott Payter-Harris was elected as chair for this meeting. He made the introductory remarks and explained the procedure being followed (for hearings where representations are from "other persons" i.e. residents). Introductions were made by those present.

2. Declarations of Members' Interests

There were no declarations of members' interests.

3. Licensing Act 2003 - Application for variation of a premises licence - ASDA Walmart Superstore, Bridge Shopping Centre, Somers Road North, Portsmouth

Derek Stone, Licensing Officer, presented the Licensing Manager's report; the application for variation needed to come to the sub committee hearing due to representations from residents ("other persons") objecting to the proposed 24 hour sale of alcohol by the store. The application had been advertised as required and the representations from residents were set out in Appendix B (mainly citing noise and anti-social behaviour concerns) and Appendix C set out existing planning conditions.

Ben Attrill, the committee's legal adviser, asked Councillor Corkery to clarify his role in attending as he had not made a written representation. Councillor Corkery announced that he was appearing as a ward councillor to represent Mr T Morgan, who had made representation but who could not attend himself due to illness. The Chair consented to his participation on this basis and he was reminded that new evidence should not be introduced.

Councillor Madden questioned whether the published representations should all include names and addresses to be valid, as it was clear that these had been asked for. Ben Attrill would look into the legal requirements for future reports.

It was reported that there had been no objections from "Responsible Authorities" but the police had agreed conditions with the applicant.

During questions from members it was asked if a planning application had been submitted. Mr Stone was not aware, with planning being dealt with separately (but the panel would be able to ask the applicant) and there would need to be planning consent in place for the same hours of opening. Members also asked about other 24 hour sales of alcohol in the close vicinity; it was reported that the Goldsmith Avenue petrol station had 24 hour permission and a store in Fratton Road could sell alcohol until 2am.

There were no questions to the Licensing Officer from the applicant. Ms Godley asked if the large Fratton Tesco opened 24 hours; Mr Stone did not think it did.

The applicant's case was presented by Clare Johnson (Legal representative for ASDA Wallmart) accompanied by Dean Glasspool, the ASDA Store Manager at the Bridge Centre. Ms Johnson reported that she had made enquiries of ASDA Head Office regarding planning consent for a variation to 24 hours; she had seen an email about this but did not have a copy in writing. She also reported that the premises licence currently permitted 24 hour opening (for groceries) irrespective of alcohol. The hearing was therefore to look at extension of hours for the sale of alcohol on the basis of the licensing objectives. Ms Johnson reiterated that the police were not objecting and they were the lead for crime and disorder matters, and discussions had been held with them to agreed standard conditions of regulation. There had been no representations from Environmental Health regarding public nuisance or from Public Health or the Children's Safeguarding Board.

Ms Johnson stressed the need for the panel's consideration to be evidence based and she felt that ASDA would address the majority of the residents' concerns and she was aware of an assurance by ASDA regarding the closing of the gate to Garnier Street. She went through the objections, which she felt were speculative rather than evidence based, and pointed out that the fire alarm testing is only twice a year. Ms Johnson stressed that ASDA were an experienced operator and should not therefore be compared to Best-One where there had been some problems in the past. ASDA had the correct staff training in place to deal with sales of alcohol and had an impeccable record as a responsible retailer.

Members then took the opportunity to ask questions; it was asked if the gate closure could be included in possible conditions to assist residents. Ms Johnson said this would need Head Office approval and later added that the gate would be under the remit of a separate part of ASDA business dealing with property matters, rather than operational matters. Members asked if the firm expected extended hours to be profitable but were advised that commercial need was not a material licensing consideration. Responding to a question on complaints received by the store, Mr Glasspool reported that some complaints had been received regarding some loud music from the multi-storey car park. It was reported that the hours of gate opening were from 7am to 11pm (and there had not been official requests to remove or replace

the gate). Regarding traffic noise at night it was asked if parking could be restricted near the Garnier Street properties? Ms Johnson replied that this would be a planning matter and a Head Office decision and there would need to be evidence regarding the gate. Whilst the store manager had operational control the parking spaces issue would need Head Office input.

Following on from this during questions from residents ("other persons") it was asked if the parking was run by ASDA or a private company; it was reported that the car park is owned by ASDA but is not part of the main supermarket. They also asked about regard for residents and examples of other such 24 hour operations by ASDA in residential areas (Ms Johnson offered to provide a list). It was also asked if contact had been made with Kwiki Mart regarding possible anti-social behaviour; ASDA had not made contact with them but had experience of operating its own 24 hour sites.

The residents' case ("other persons") Ms M Stone and Ms V Godley, with ward councillor Cal Corkery present to represent Mr Morgan presented their objections. Ms Stone spoke about the previous resident action taken to deal with problems at Best One to tackle the anti-social behaviour (ASB) experienced there. They had seen the link between alcohol and anti-social behaviour and were concerned that there were not enough police officers to respond to calls of ASB incidents. Residents had paid for the gate and there is a caveat that this should be closed when the store is closed (which did not always happen). Residents wanted to enjoy their homes peacefully. She asked who would be the customers? Ms Johnson responded that these included shift workers and ASDA had over 300 stores operating 24 hours.

Ms Godley was also concerned regarding noise and drinking in the street and mentioned that there had been violence before the gate had been installed. She felt that 24 hour opening was more suited to out of town retail centres than inner city residential areas.

Councillor Corkery, for Mr Morgan, expressed concern by residents due to the experience with Best One where there had been ASB and community action had led to a review of that premises licence. Cllr Corkery also voiced the residents' upset at the lack of community engagement and possible setting of precedent; he was reminded not to introduce new evidence and that each case was considered on its own merits.

There were no further questions from members but from the applicant and it was clarified that the Brothers/Best One licensing hours had been reduced to 11pm then, more recently, extended to 2am. Ms Johnson wished to state that the police had not produced figures of local crime and a lot of residents' fears were speculation.

Summing up; all parties took the opportunity to sum up and were asked not to introduce additional evidence at this stage. The residents reiterated their concerns that ASB would rise link to the sale of alcohol and noise caused by cars.

Ms Johnson summed up for the applicant and gave legal case law regarding evidence based decisions and for the disregard of speculation and stressed the experience of ASDA in operating 24 hour stores nationally.

The Chair asked if everyone had said all they wished? Mr Attrill asked Ms Johnson if the applicant believed a condition regarding keeping the gate opening times would be unenforceable? Ms Johnson responded that the gate was not within the control of the premises licence holder, but she stated that the applicant could offer an assurance, which would be formally recorded, that the gate opening times would not be changed; and should this be subject of a review application this would be on record. Mr Attrill wished to advise the members that they were evaluating risk as part of the licensing process. When considering the weight of evidence and representations made; this was not a court of law and any evidence considered relevant and probative could be taken into account. The residents stated that their rights should also be taken into consideration.

The Sub Committee members then deliberated in private before all parties were invited back in for the decision to be announced.

Decision of the Sub Committee

The decision was read out by Ben Attrill, the Legal Adviser to the Sub Committee:

"The Sub Committee has carefully considered the application for variation of a premises licence at ASDA Wallmart Superstore, Bridge Shopping Centre, Somers Road North, Portsmouth.

The Sub Committee has had due regard to the Licensing Act 2003, statutory guidance, the Licensing Objectives, the evidence of all the parties, both written and given orally today, Human Rights legislation and the public sector equality duty.

In light of all the above the Sub Committee has determined that the application shall be granted.

Reasons

The Sub Committee has listened carefully to concerns expressed by residents raising issues relating to an increase in anti-social behaviour and drunkenness in a residential area including noise nuisance late at night. The Sub Committee accepted legal advice that parking, planning, traffic, commercial need, the potential for precedent (which is not created in licensing cases) are not relevant considerations. The Sub Committee focussed its mind upon the licensing objectives.

Consideration was given to imposing a condition regarding the gate leading to Garnier Street, however, legal issue was raised that this was not in the ownership or control of the premises licence holder. Further, an express assurance was provided to the Sub Committee that there shall be no change to the times the gate is opened or closed.

The Sub Committee had to consider the potential impact of alcohol sales and not the operation of the premises generally and, on balance, was not able to restrict the application at this time. Police support for the application, subject to the conditions agreed, and the lack of objection from Responsible Authorities otherwise, supports this position. It should be stressed, however, that there is a right for residents to bring a review of the premises license where evidence shows that issues arise as a result of the variation. Also, no precedent is set by this decision - each case is considered on its merits.

The Sub Committee is disappointed with an apparent lack of consultation or engagement with residents. It strongly recommends that consideration be given to blocking off use of parking spaces adjacent to/behind Garnier Street after 23.00 hours (in line with gate closure times) as a gesture of goodwill if the store is to open for 24 hours or if there is an extension in opening hours. It must be stressed that in light of the representation from the Planning Department it appears that other consents will be required before this is permissible generally - this decision does not negate that need.

There is a statutory right of appeal for all parties to the Magistrates' Court.

Formal notification of the decision will set out that right in full."

The meeting concluded at 12.28 pm.

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Chair