

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Thursday, 26th April, 2018, 10.00 am

Councillors: Les Kew (Chair), Deirdre Horstmann and Caroline Roberts

Officers in attendance: Shaine Lewis (Team Leader Resources - Legal Team), Alan Bartlett (Public Protection Team Leader) and Terrill Wolyn (Senior Public Protection Officer)

104 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer advised those present of the procedure.

105 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

106 DECLARATIONS OF INTEREST

There were none.

107 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

108 MINUTES: 15TH MARCH 2018

These were approved as a correct record and signed by the Chair.

109 LICENSING PROCEDURE

The Chair drew attention to the procedure to be followed for the next item of business.

110 APPLICATION TO VARY THE PREMISES LICENCE FOR SHELL WAITROSE ELM TREE, WELLS ROAD, WESTFIELD, RADSTOCK BA3 3UR

Applicant: Shell UK Oil Products Ltd, represented by Sarah Clover (Legal Representative, Kings Chambers), Corrigan Lockett (Lockett & Co Licensing Consultants), Garry Wharmby (Retailer for Shell UK Oil Products Ltd)

Other Persons: Greg Carpenter-George, Ian Cole, Mr and Mrs Warne

The parties confirmed that they understood the procedure to be followed for the hearing.

The Senior Public Protection Officer presented the report. The application was for the variation of an existing licence by extending the hours for the sale of alcohol for consumption off the premises to 24 hours a day, by adding late night refreshment daily between 23:00 and 05:00 the following morning and by revising the floor plan.

The premises was already licensed to open 24 hours a day. The applicant had offered no additional measures in the operating schedule. Twelve representations had been received from Other Persons, which related to all four of the licensing objectives. No representations had been received from Responsible Authorities.

Ms Clover began the submission for the applicant. She asked Members to note that this was not the first time that the applicant was applying to sell alcohol at the premises or to sell it late in the evening; the current licence already allowed the sale of alcohol until 23:00. There had been no representations from the Responsible Authorities. There had been no reported incidents at the premises. She submitted that the issues raised in the representations had not been linked to the premises, and there was nothing in the premises log book corresponding to the concerns raised. There were no reports of the police being called to the premises. The representations seemed to reflect residents' fears about what might happen, rather than actual events in the past.

She invited Mr Lockett to provide some details about the application. Mr Lockett sought leave to submit additional written information, but after examining it the Other Persons questioned its relevance, so leave was refused by the Chair. Mr Lockett said that the premises would in future operate as a convenience store under the Waitrose brand, and would be more focussed on groceries and ready meals than in the past. It would in fact be like a mini Waitrose and not a typical Shell store. He said that his company worked with Shell across the whole of the UK, so the application was based on a lot of previous experience. A refusals log and an incident log were kept. There was a training manual, and staff were trained regularly. There was also a supervisor's manual. All staff were fully authorised to sell alcohol. A Challenge 25 policy was operated. He submitted that there was a very high standard of operation at Shell premises compared with many outlets selling alcohol. A small section for chilled drinks, such as lager, would be added, and the alcohol section would in future be in a single line, which would make it easier to monitor. The range of alcoholic drinks sold would not change dramatically.

In conclusion Ms Clover requested Members to note the lack of linkage between the content of the representations and the premises and the absence of representations from the Responsible Authorities.

Replying to questions from Members the applicant stated:

- The police had not been called to the premises during the three years that Mr Wharmby had been manager.
- CCTV operated 24 hours a day and recordings were retained for 31 days.
- The premises did not open 24 hours a day at present, though there was authority for this in the current licence. It was Shell's intention to open all its retail outlets 24 hours a day and to sell alcohol 24 hours a day, if the level of business justified this, unless planning or other conditions prevented it.

There were no questions from the Other Persons.

The Other Persons stated their cases.

Greg Carpenter-George said that he lived just over road from the premises. Between his residence and the premises there was a public footpath in which there is always a massive amount of litter, as it is not cleaned on a regular basis. A lot of it, including black bags, came from the premises. He expected litter to increase with the increased opening hours of the premises. The accumulation of litter in the lane had moderated while the premises was closed during refurbishment. He did not agree that the lack of reported complaints indicated that there was no problem. It was too much to expect residents to contact the police every time an incident occurred. Because something is not logged, that does not mean it did not happen. The absence of recorded complaints was not a reliable indicator. Sometimes residents had to close windows because of noise. He did not think the application was appropriate in an area where there was a great deal of underage drinking. He submitted that the hours applied for were excessive, especially in a rural area. There were many other outlets from which alcohol could be bought within a short distance. He originally came from Birmingham, but had chosen to live in a rural area because he wanted peace and quiet. There had been occasions when people coming to the garage had opened all their car doors with music blaring. He challenged the claim that every incident had been logged. 24-hour sale of alcohol was not necessary.

Replying to questions from Members he stated:

- At present there was not a great deal of noise after 23:00.
- He did not accept that there would be no problems just because the store would be branded as “high-quality” Waitrose. Late-night shoppers who had already been drinking would cause problems wherever they bought drink.
- He had been lax in reporting incidents that had occurred. There were problems now and he feared they would increase with the increased hours.

Ian Cole did not wish to make a statement.

Mrs Warne stated her case. She said that the premises was surrounded by residences. Two bungalows on one side were occupied by very elderly couples. They had problems with noise. She was apprehensive about what would happen in the summer with a 24-hour licence. There had been terrible problems with underage drinking in the past. A Panorama programme had had a report from Westfield Park, some four or five hundred metres from the premises, where there had been underage drinkers as young as ten. Adults had purchased drink for them. It had taken years to improve the situation. There was an anti-social element in the community, who residents were generally content to live with and tried to work round.

It was a worrying prospect that people could return from the pubs in Bath at 3am and purchase more alcohol locally, after all the effort that had been put into tackling the previous problems. Most problems, such as people vomiting and urinating in the local alleyways, occurred away from the premises and out of sight of the CCTV.

About a year ago a car had been driven down her road by a drunken driver late at night, and had ploughed into parked cars before crashing outside her house. She

had gone downstairs to investigate, and saw five people in their 20s all drunk. The driver ran off before the police arrived.

The premises would be the only outlet between Bath and Shepton Mallet selling alcohol for 24 hours a day, and it would be absurd to think it was not going to be used by young people out for a good time. Fear for the future was based on what had happened in the past. She had lived there for twenty-five years, and had seen problems occur again and again, and all because of alcohol. Residents' quality of life had improved dramatically since the pub had closed and houses and flats had been built on the site.

Mr Warne said that Midsomer Norton and Radstock had a reputation for alcohol-related problems. The premises would be the only outlet in the vicinity selling alcohol after 23:00. Residents' fears for the future were based on what had happened in the past.

The Other Persons did not wish to sum up.

Ms Clover summed up for the applicant. She noted that the Other Persons had made contradictory statements, Mr Carpenter-George having said that the application was unnecessary, since there were plenty of other outlets in the area selling alcohol, whereas Mr and Mrs Warne had said that if the application were granted the premises would be the only outlet selling alcohol after 23:00. Mrs Warne had said that residents' lives had improved since the pub had closed. There was no evidence specifically relating to the premises, and, in accordance with the law, in the absence of such evidence the application had to be granted.

Following an adjournment the Sub-Committee **RESOLVED** to grant the variation as applied. Authority was delegated to the licensing officer to issue the licence.

Reasons

Members have had to determine an application to vary a Premises Licence at Shell/Waitrose, Wells Road, Radstock. In doing so, they have taken into consideration the Licensing Act 2003, Statutory Guidance, the Council's Policy and the Human Rights Act 1998.

Members are aware that the proper approach under the Licensing Act is to be reluctant to regulate in the absence of evidence and they must only do what is appropriate and proportionate in the promotion of the licensing objectives based on the information put before them. Members noted that each application is considered on its own merits.

Members were careful to take account of the relevant written and oral representations and were careful to balance their competing interests. Members were however careful to disregard irrelevant matters such as traffic and noise, the need for a 24 hour licence, amenity, and matters not associated or attributable to the premises. For example, nuisance, anti – social behaviour whilst the premises are closed, general litter and drink driving.

The Applicant

The applicant stated this is a variation of a licence relating to a convenience store that is well established in the local area which is licensed to sell alcohol until 11pm. The premises, however, is soon to undergo refurbishment and reopen later in the year under the Waitrose brand. Whilst it presently has the benefit of a premises licence until 11 pm, once reopened it is intended that the store will offer an enhanced range of goods, fresh/frozen foods and fuel etc. 24 hours a day 7 days per week, including the sale of alcohol. The applicant noted that Responsible Authorities had not made representations and there are no reported incidents relating to the premises. The applicant added that the store will be operated by an experienced manager assisted by a team of full and part time staff and that the Designated Premises Supervisor will be responsible for training all staff, completing and maintaining training records and operating the Premises in accordance the Lockett & Co Due Diligence package. The Due Diligence package contains a range of materials for premises licence operators, including a training manual, refusals log, incident log and awareness badges and posters relating to underage sale, Drink Awareness and Challenge 25. It was further stated that the range of alcohol offered will not significantly change and the extension in hours will give customers and the store more flexibility.

In terms of Interested Party representations, it was stated that the incidents raised do not match any of the incidents recorded in the store's incident log or appear to be connected with the operation of the premises. Whilst not belittling the representations, the applicant stated Shell take these concerns seriously.

The Interested Parties/Responsible Authorities

The relevant representations received from Interested Parties raised all 4 licensing objections although focused on anti-social behaviour and public nuisance in the local area. The Interested Parties stated that litter from the premises collects in the public footpath opposite, and it is feared that this together with anti-social behaviour currently experienced will increase. It was further stated that there are young and elderly people in the area, underage drinking has been a problem in the past which has improved due to the hard work of residents and licensees, and there is no need for a 24 hour licence given the number of licensed premises in the area.

Members

Members carefully considered the representations made on behalf of the Applicant and Interested Parties and noted there were no representations for Responsible Authorities.

Members reminded themselves that the premises are not permitted to sell alcohol by retail after 11 pm or provide late night refreshment but nevertheless they are permitted to open 24 hours 7 days per week although choose not to. With regard to Interested Parties, Members noted that a number of the representations acknowledge some reported anti-social behaviour and nuisance occurs when the premises are closed and that matters have improved since the Elm Tree public house closed. Accordingly, and whilst the representations refer to drink fuelled behaviour, in the absence of information or an evidential basis linking anti-social behaviour or nuisance to the premises Members cannot speculate or attribute any such incidences to the premises.

In all the circumstances Members found that given the history of the premises and the conditions on the current licence granting this application is unlikely to have a detrimental effect on the licencing objectives. Therefore, the application is granted as applied for with authority to issue the licence delegated to the licensing officer.

The meeting ended at 11.25 am

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services