

# Crawley Borough Council



## Minutes of Licensing Sub Committee 23 April 2012 at 6.30pm

**Present:**

Councillors B J Burgess, B J Quinn and K J Trussell

**Officers Present:**

Mike Lyons	Senior Licensing Officer
Mez Matthews	Democratic Services Officer
Sharon Rana	Legal Clerk - Solicitor

**Also in Attendance:**

Applicant	Mr Leo Charambides (Barrister – Shell UK Oil Products Limited)
	Mr Corrigan Lockett (Lockett and Co)
	Ms Donna Zaffino (Lockett and Co)
	Mr Myilvganam Thayanathan (Proposed Designated Premises Supervisor)
	Mr Navarafnam Kamalasiri (Retailer)
Objector	Mr George Black (Resident)
	Mohammed Shakir (Resident)
	Mrs Eileen Webster (Resident)

**28. Appointment of Chair**

**RESOLVED**

That Councillor B J Burgess be appointed Chair for the meeting.

## 29. Members' Disclosure of Interests

The following disclosure of interests was made by a Member:-

<b>Member</b>	<b>Minute Number</b>	<b>Subject</b>	<b>Nature of Disclosure</b>
Councillor B J Quinn	Minutes 30 and 31	Application for the Grant of a New Premises Licence for 'Shell UK Oil Products Ltd', Overdene/Ifield Drive, Ifield, Crawley	Personal and Non Prejudicial Interest in the item as he had previously purchased petrol from the filling station.

## 30. Application for the Grant of a New Premises Licence for 'Shell UK Oil Products Ltd', Overdene/Ifield Drive, Ifield, Crawley

The Sub Committee considered an application for the grant of a premises licence in respect of premises at Overdene Drive, Ifield, Crawley.

Following the introduction of those present at the meeting, the Legal Clerk outlined the procedure for the meeting. The Legal Clerk informed all parties that the Sub Committee had requested a briefing meeting with the Legal Clerk prior to the commencement of the Sub Committee, to confirm the procedure that would be followed during the meeting. During the briefing meeting, the Sub Committee had asked general questions about the Sub Committee's responsibilities when determining the primary use of the premises, to which the Legal Clerk had given the following general advice:

- Reiterated the wording in Section 176 of the Licensing Act and had referred the Sub Committee to Paragraph 4.1 of the report;
- Referred the Sub Committee in particular to Paragraphs 5.23, 5.24 and 5.25 of the guidance issued under the Licensing Act which stated that the Licensing Authority must decide whether or not the premises was used primarily as a garage;
- The Sub Committee was given a summary of the recent position established in case law (namely outcome of Case R on the application of Murco Petroleum vs Bristol City Council in which the court said a Sub Committee was entitled to adjourn determination of an application where insufficient information regarding its primary usage had been provided despite several requests for further trading information);
- The Sub Committee had been referred to the information which had been provided by the Applicant that day entitled supplementary information, which would also form part of the information to be considered by the Sub Committee. A copy of that additional information had now been provided to all parties.

The Legal Clerk advised those present that any advice given to the Sub Committee in the briefing meeting had been general in nature and the merits of the particular case before them had not been discussed. It was confirmed that the Sub Committee had not asked for clarification of any aspect of the application or on the representations received from any party.

The Legal Clerk then asked all parties present, if they wished to make any relevant applications, for example additional information or to cross-examine any party. Mr G Black advised the Sub Committee that he wished to make an application to cross-examine the Applicant.

Supplementary information had been supplied by the Applicant prior to the commencement of the Sub Committee which included:

- A general description and photographs supplementary to the premises licence application;
- Staff Training Manual;
- Premises Refusal Log;
- Premises Incident Log;
- Premises Licence Manual;
- Staff Guide to Selling Alcohol;
- Due Diligence Instruction Guide;
- Cards issued when refusing alcohol sale.

The Objectors informed the Sub Committee that they had not seen the supplementary information and therefore the Chair agreed to adjourn the meeting for five minutes whilst the Objectors took some time to consider the information.

Report PES/075 of the Council's Head of Planning and Environmental Services was presented by Mike Lyons, a Senior Licensing Officer for Crawley Borough Council.

### **The Application**

The Senior Licensing Officer, Mr Lyons, informed the Sub Committee that on 2 March 2012 Shell UK Oil Products Limited, submitted an application to the Council as the Licensing Authority for the Borough of Crawley for the grant of a premises licence in respect of premises at Overdene Drive, Ifield, Crawley. The application was detailed in Appendix A to the report and sought for the supply of alcohol off the premises. The Applicant had stated in the application that the premises intended to promote the four licensing objectives with the steps set out in the operating schedule.

It was confirmed that the application had been advertised in accordance with legislation and as a result of the consultation process, the Council had received a response from Crawley Borough Council's Planning Department stating no concerns with the application as well as a petition outlining four people who agreed with the submissions made within the petition. The letter of representation identified certain matters where the licensing objectives might be compromised if the application was granted: "the garage is next door to a school where pupils are constant visitors to the garage where they regularly buy food and drink and 'hang around'. Having the attraction of alcoholic drink available will only increase the problems with litter, noise and disruptive behaviour at all times of the day and night". No further representations or comments had been received regarding the application including any other responsible authority.

The Sub Committee was then guided through the remainder of the report which set out the reasons for the Hearing and the matters which the Sub Committee should take into consideration when dealing with the application, including the relevant sections of the Guidance issued by Government pursuant of Section 182 of the Licensing Act 2003, and the Council's policy considerations.

The Senior Licensing Officer drew the Committee's attention to the "proposed Designated Premises Supervisor consent" section of the application on page 19 of the report. The Senior Licensing Officer asked the Applicant whether the reference number for consent was now available, and the Applicant confirmed that it was.

The Senior Licensing Officer then proceeded to inform the Hearing of the options available to it in respect of the application, and reminded the Sub Committee that any decision must be necessary and proportionate for the promotion of the four licensing objectives. The options were to:

- (1) Grant the application subject to:
  - (i) Conditions which are consistent with the Operating Schedule modified to such an extent as the authority consider necessary for the promotion of the licensing objectives; and
  - (ii) Any relevant mandatory conditions.
- (2) Exclude from the scope of the licence any of the licensable activities to which the application relates.
- (3) Refuse to specify a person in the licence as the Premises Supervisor.
- (4) Reject the application, giving reasons for doing so.

Following questions from the Sub Committee, the Senior Licensing Officer advised the Sub Committee that the proposed opening hours for the sale of alcohol were 0700hrs-2200hrs Monday to Sunday, and that, following confirmation from the Applicant that the reference number for consent was now available, the Senior Licensing Officer was satisfied with the Operating Schedule.

### **The Applicant**

The Applicant's representative, Mr Charambides, addressed the Sub Committee and stated that he was surprised that the issue of Section 176 had been raised as he had not been aware that the Sub Committee would require clarification. He stated that under Regulation 7(1)(d) of the Licensing Act 2003 (Hearings) Regulations 2005, the Applicant should have been informed prior to the Sub Committee of any information required for the purpose of clarification. Mr Charambides informed the Sub Committee that he would be willing to discuss any concerns regarding Section 176, although that matter had not been raised in the relevant representations received. The Chair informed those present that the Sub Committee acknowledged and understood the issues surrounding Section 176 and were content that the information contained within the report showed that the premises satisfied the Section 176 requirements.

Mr Charambides continued his submission and stated the following:

- (1) The application before the Sub Committee was straightforward;
- (2) Paragraph 5.3 of the report highlighted that "the overriding philosophy of the licensing regime is that there is a presumption that a licence will be granted unless there are compelling reasons to refuse the licence";
- (3) Although he sympathised with the concerns of the Objectors, the concerns raised in a representation must be relevant to the licensing objectives, and any discussion is constrained to the promotion of those objectives and the sale of alcohol. General concerns (eg. the impact of tankers) were not relevant considerations;
- (4) The issue of 'need' raised in the representations was not "relevant" and was an issue for planning and the market;

- (5) Paragraph 5.6 of the report highlighted that the Council would primarily focus on the direct impact the licensable activities might have on the public within the area. He drew the Sub Committee's attention to the decision in the case of Thwaites known as the "Thwaites principle" and stated that the fact the neither the Police nor another Responsible Authority had made representations should carry weight in the Sub Committee's considerations.
- (6) The Objectors concerns relating to the premises' proximity to nearby schools would be alleviated by the information contained within the operating schedule (pages 24-25 of the report).
- (7) The premises had been selling age restricted goods for a long time and no complaints had been received.
- (8) Shell premises were internally tested by Shell itself in relation to the sale of age restricted products and the premises would be penalised if it failed a test. The premises had not failed any age restricted tests.
- (9) Training relating to the sale of age restricted products was supported by Lockett and Co, which was again supported by the training packs, training record, training DVD, training and reminder cards. The due diligence package refer to the training packs and reminders.
- (10) All training was recorded, and all staff had access to the training packs.

The Sub Committee asked a number of questions and raised several issues, and the following answers were provided by the Applicant:

Question / Issue	Answer
Did all new staff automatically receive training?	All staff were trained by Shell before undergoing training on the premises. That training was backed-up quarterly and recorded in the training manual and training record. All training was reviewed by Shell. Incidents were reviewed daily by the Manager and monthly by the Regional Retailer.
Were all staff experienced in the sale of alcohol?	The Designated Premises Supervisor (DPS) had two years experience in the sale of alcohol. The Retailer had managed sites since 2006 and had previously ran an off-licence. Neither had ever been reviewed nor prosecuted.
Would any replacement DPS or Retailer be experienced?	Shells' insurance policy required that the DPS and Retailer were experienced and trained.
Why was Shell applying for such long hours for the supply of alcohol?	The hours of opening matched the hours for the supply of alcohol. Chapter 5 of the guidance supplied by the Secretary of State suggested that matching those hours was good practice. Evidence had shown that problems were more likely to occur when hours were staggered artificially.
Surprised that no representations had been received by the Police or other	The premises did not encourage loitering. The premises operated a

Question / Issue	Answer
Responsible Authorities. Concern regarding the proximity of the premises to the railways station and that the sale of alcohol would encourage youth drinking and loitering on the premises.	Challenge 25 Policy and had not experienced any concerns or prosecutions relating to the current sale of age restricted products. The staff were experienced at refusing the sale of age restricted products. There was a high level of due diligence.
It was likely that a volume of children visited the premises during the school lunch break. How did staff control the number of children entering the shop during those periods?	There was only one till area. It was Shell policy not to sell single cans/bottles of alcohol or pop. The mark up on alcoholic products within the premises was high, and the expense was prohibitive to the sale to children. Staff were trained to check the age of customers in age restricted sales. The premises operated EPOS tills which provided an automatic reminder for staff to check proof of age on age restricted products. Due diligence of Shell and the premises had been proven.
Which schools were in close proximity to the premises?	Ifield Community College (which could now be accessed from Overdene Drive) and The Mill Primary School which was opposite the filling station.
How many Licence Holders were there?	Both the DPS and Retailer were Licence Holders. All alcohol sales would be carried out under the DPS.

Mr Charambides informed those present that the Incident Log was a way to engage discussion with the community. He suggested that residents visit the premises and ask to view the Incident Log. He informed the Objectors that residents were welcome to leave their telephone number along side any incidents which they wished to discuss, and the Regional Retailer would contact them when they completed the monthly review of the Incident Log. He advised the Objectors that Shell wanted to maintain a relationship with the local residents.

Mr Charambides stated that the hours for the sale of alcohol matched that of other local stores. He again drew the Sub Committee's attention to the Operating Schedule contained within the application and suggested that the due diligence package gave the Sub Committee an insight into Shell and the way in which the company was run.

**Objector (Mr George Black)**

Mr George Black (an Objector) addressed the Sub Committee and made the following submissions:

- (1) The premises consisted of twelve pumps, one car wash, hoover, jet wash and liquid gas bottles. There were no vehicle sales nor vehicle maintenance,
- (2) The filling station was open from 0600hrs and not 0700hrs as stated by the Applicant.
- (3) One person worked in the shop until the Manager arrived at 0800hrs.

- (4) Children regularly thieved from the shop.
- (5) Pain relief was on sale on the shop floor.
- (6) Bottles of pop were currently sold individually.
- (7) Certain covenants which had been in place when the filling station was built had subsequently been removed and so were no longer in existence.
- (8) Lorries arrived at the filling station as early as 0600hrs
- (9) Tankers accessed the filling station from the cul-de-sac (the premise's exit) as access could not be gained via the main entrance.
- (10) The application for the supply of alcohol off the premises was "the last straw" for residents.
- (11) A meeting had taken place between the residents and the Police.
- (12) The Applicant's representative, Mr Charambides had stated that no problems had occurred at the premises, but that was incorrect.
- (13) The shop was well utilised, and often there was only one member of staff behind the counter. Customers could become aggressive when staff refused to sell them age restricted products and therefore staff were terrified.
- (14) The shops in Ifield Parade did not remain open until 2200hrs.

The Senior Licensing Officer reminded Mr Black that the Licensing Sub Committee could only take into consideration those concerns of residents which related to the Licensing Act 2003. The Senior Licensing Officer went on to say that the Police had been sent a copy of the application as part of the statutory consultation process, but they had not submitted a representation.

Mr Charambides suggested that it could have been the Transport Police who met the residents if the issue in question had related to Ifield Station.

**Objector (Mrs Eileen Webster)**

Mrs Eileen Webster (an Objector) addressed the Sub Committee and stated that there were at least two other convenience stores in the area. Mr Charambides reminded Mrs Webster and the Sub Committee, that "local" was defined as within a quarter mile of the Shell premises. Mrs Webster also stated that 0700hrs was too early to start selling alcohol.

**Objector (Mr Mohammed Shakir)**

Mr Mohammend Shakir (an Objector) stated that he did not wish to make any submissions in addition to those made by Mr Black.

**Questions**

The Sub Committee asked a number of questions and raised several issues, and the following answers were provided:

Question / Issue	Answer
If the application was granted, how would the Local Authority monitor / check the premises?	Any breach of condition/s would be a criminal offence and the Local Authority could take action against the premises. Due to limited resources, the Local Authority only made checks on those premises which came to its attention. (Answered by the Senior Licensing Officer)
How would the premises prevent proxy purchases?	Shell was a responsible operator and did its best to promote the licensing objectives. If the retailer was not aware of proxy purchasing it was not the retailer's fault, although Shell did all that it could to prevent that type of purchase. It would not be reasonable nor proportionate to expect Shell to stop proxy purchases. (Answered by Mr Charambides, Shell's representative)
If the application was granted, how could residents feed back any future concerns?	Future concerns should be fed back to the Licensing Department. Paragraph 4.10 of the report stated that other Acts could be used to deal with the various concerns raised by residents. The Council had an Environmental Health Department which dealt with noise nuisance and any noise related concerns could be passed on to them. (Answered by the Senior Licensing Officer).
How many other Shell outlets sold alcohol?	Shell had never had a Review. Residents were able to initiate a Review. Mr Charambides was happy to show residents how to initiate a Review process. (Answered by Mr Charambides, Shell's representative).

**Closing Comments**

Mr Charambides, as the Applicant's representative, addressed the Sub Committee and stated that a notice used to be on display at the premises stating that only two school children at a time would be allowed in the shop, but it might have been removed when the store was refurbished. The Applicant would be happy for an additional condition to be added which stated that only two school children would be allowed into the store at any time.



The Senior Licensing Officer stated that a lot of premises within the Borough operated 24/7 and that the supply of alcohol from 0700hrs to 2200hrs was common.

Mr Black stated that even if a condition was added stating that only two school children be allowed in the shop at any time, he was concerned that the condition would not be policed. He stated that that policing of the premises was a problem as action was not being taken.

## **RESOLVED**

In accordance with Regulation 14(2) of the Licensing Act 2003 (Hearings) Regulations 2005, the public be excluded from the following part of the Hearing. The Sub Committee considered that the public interest in taking such action outweighed the public interest in the Hearing taking place in public.

### **31. Application for the Grant of a New Premises Licence for 'Shell UK Oil Products Ltd', Overdene/Ifield Drive, Ifield, Crawley**

The Sub Committee gave further consideration to the application and to the matters raised at the meeting. In formulating its decision, the Sub Committee took into account the options that were available and considered what was necessary to ensure that the licensing objectives were promoted.

## **RESOLVED**

The Sub Committee, having considered the application and the relevant representations in detail, resolved to take the actions as detailed in **Appendix A** to these minutes, because it was considered necessary to promote the licensing objectives.

### **32. Re-admission of the Public**

The Chair declared the meeting re-open for consideration of business in public session and commented that the Sub Committee had requested that its decision and rationale be announced by the Legal Clerk on their behalf.

The Legal Clerk read out the Sub Committee's decision as detailed in **Appendix A** to these minutes. It was also announced that all parties would receive a copy of the decision notice within five days of the Hearing.

### **33. Closure of Meeting**

With the business of the Sub Committee concluded, the Chair declared the meeting closed at 9.20pm.

## Appendix A

### Decision of the Licensing Sub Committee

The Hearing of Shell UK Oil Products Limited's application for the grant of a premises licence in respect of the premises located at Overdene Drive, Ifield in Crawley was heard by a Licensing Sub Committee of Crawley Borough Council on 23 April 2012.

The application sought to supply alcohol off the premises during the hours of 7:00 am to 10:00 pm Monday to Sunday, these hours also being the proposed opening hours in respect of the premises.

The Sub Committee, in determining the application, carefully considered the following:

- The application and all the material provided in support of it by Shell UK Oil Products Limited (appendix A to the report and the additional information submitted today), and the submissions made during the Hearing in support of it.
- Relevant representations made by interested parties (appendix B to the report) and the submissions made by those parties.
- The guidance issued by the Secretary of State pursuant to s.182 of the Licensing Act 2003.
- The Council's own Licensing Policy.

#### DECISION

##### Primary use

As a preliminary issue, the Sub Committee determined that the premises were not excluded premises for the purposes of section 176 of the Licensing Act 2003 based on the information that had been provided. The Sub Committee was satisfied that the premises is a well established convenience store with ancillary fuel sales.

##### Grant of premises licence

The Sub Committee then moved on to consider the determination of the application for the grant of a premises licence.

The task of a licensing authority on an application for the grant of a premises licence is to consider the application and representations made and thereafter a duty falls upon the authority to impose such steps as set out in s.18(4) of the Licensing Act as the licensing authority considers necessary to promote the licensing objectives.

The Sub Committee listened carefully to the submissions made by the interested parties Mr Black, Mrs Webster, and Mr Shakir who attended this evening particularly that they were concerned that the supply of alcohol at these premises would lead to an increase in anti-social behaviour, an increase in opportunity for underage children to be able to purchase alcohol and an increase in proxy purchasing. The Sub Committee noted that these were local residents within the vicinity of the premises and appreciated their personal experience and knowledge of the area.

The Sub Committee paid regard to the section 182 guidance and its own policy which says that it was a matter for the licensing authority to make judgements about what constitutes public nuisance and what is necessary to prevent it in terms of conditions attached to premises licences. It also noted that it ought to focus on the impacts of the licensable

activities at the specific premises on persons living and working in the vicinity and look to see if they are disproportionate and reasonable.

In assessing this the Sub Committee noted that there were no relevant representations made by any of the responsible authorities, including the Police or the Environmental Health department, which suggested that any of the four licensing objectives would be undermined in the event that the premises licence were granted. Having heard and carefully considered the submissions made by the interested parties the Sub Committee was of the view it had no real evidence before it that the granting of the premises licence would lead to a direct increase in public nuisance, and that any expected increase in potential crime and anti-social behaviour was speculative and an assumption at this stage.

Further the Sub Committee paid regard to its own policy which reiterates that the overall philosophy of the licensing regime is that there is a presumption that the licence will be granted unless there are compelling reasons to refuse the licence.

The Sub Committee also considered the submissions made by the representative for the applicant, Shell UK Oil Products Limited, particularly the submissions regarding the applicants due diligence policy which included all staff being trained by Shell before being trained internally, that all training completed is recorded in the training manual, that all staff are required to take a refresher test quarterly, the results of which are reviewed by Shell. In addition to this the Sub Committee considered the proposed conditions (consistent with the submitted operating schedule) and came to the view that the imposition of conditions was a necessary step to promote all four licensing objectives, a step which also the Sub Committee hopes will appropriately alleviate the concerns of the neighbouring residents.

Therefore the decision of the Sub Committee was to grant the premises licence subject to the conditions which were consistent with the operating schedule but modified to the following extent:

- A suitable and sufficient CCTV system with recording facilities will be in place at site and will operate at all times the premise is open for licensable activities. Images can be made available upon reasonable request by the Police or other relevant officers of a responsible authority.
- Staff will be trained with regard to their responsibilities in the retail sale of alcohol and regular refresher training will also be undertaken. Training records can be made available for inspection upon reasonable request by the Police or other relevant officers of a responsible authority.
- A refusals book will be operated and maintained and will be produced to a relevant officer of the Police or other relevant officers of a responsible authority upon request.
- A Challenge 25 policy will be operated at the premise, acceptable forms of identification are a passport, photocard driving licence and PASS accredited identification card.
- Spirits will be located behind the counter at all times that the premises will be open.
- A sign will be placed in prominent display at the premises containing the following wording "No more than 2 unaccompanied school children at any time whilst these premises are open."

The SubCommittee would like to express that it sympathised with the concerns of the local residents, particularly those which related to the promotion of the licensing objectives. However, it is satisfied that there are adequate measures in place to protect those living in the vicinity of the premises under existing laws. It also would like to reiterate that there is the option of a review of the premises licence open to interested parties in the event that evidence materialised to suggest that the licensing objectives were no longer being promoted in the future and the Sub Committee encouraged residents to keep in touch with the relevant authorities should any such problems arise.

The Sub- Committee would like to take this opportunity to thank all the parties for their attendance and assistance confirm that a full written decision will be sent out within 5 working days.