

# Crawley Borough Council



## Minutes of Licensing Sub Committee Monday 23 November 2009 at 7.35pm

### Present:

Councillors      A G Brown, D P Kavanagh and B J Quinn.

### Officers Present:

Tony Baldock	Group Manager for Food, Licensing and Occupational Health
Steve Lappage	Democratic Services Manager ( <i>Observing</i> )
Mike Lyons	Senior Licensing Officer
Mez Matthews	Democratic Services Officer ( <i>Observing</i> )
Sharon Rana	Legal Clerk
Chris Pedlow	Committee Clerk

### Apology for Absence:

Councillor      L R Gilroy

### Also in Attendance:

Applicant      Robert Botkai  
*Solicitor representing Applicant – (BP Oil UK Ltd)*

Masoud Fassih  
*Territory Manager – (BP Oil UK Ltd)*

Raj Rajani  
*Site Operator– (BP Oil UK Ltd)*

Objectors:      Norman Agnew  
*Interested Party*

Ben Horner  
*Interested Party*

Frosoulla Ratcliff  
*Interested Party*

Roland Ratcliff  
*Interested Party*

Philip Slaughter  
*Interested Party*

Richard D Tidmarsh  
*Interested Party*

**30. Appointment of Chair**

**RESOLVED**

That Councillor A G Brown be appointed Chair for the meeting.

**31. Members' Disclosure of Interests**

No disclosures of interests were made by Members.

**32. Application to a New Premises Licence – BP Oil UK Ltd – Tilgate Services Station**

The Sub-Committee considered an application for a new premises licence held in respect of the 'BP' Tilgate Services Station, Tilgate, Crawley ('Premises') by BP Oil UK Ltd ('Applicant'). Following the introduction of those present at the meeting, Councillor Brown, the Chair of this Licensing Sub Committee, reminded all parties present that at the Licensing Sub Committee meeting held on 5 October 2009, a Sub Committee considered a recommendation by the Licensing Authority that there be an extension of time in accordance with regulation 11 of Licensing Act 2003 (Hearings) Regulations 2005. The Sub Committee were minded to grant the extension of time to 54 days as it was in the public interest to do so.

The Legal Clerk advised the meeting that she had met with the Members of the Sub Committee prior to the Hearing and that she had given them general advice about the procedure for the Hearing. The Legal Clerk then asked whether either the Applicant or the Objectors had any applications for the introduction of new material or any requests for an adjournment.

Mr Agnew and Mrs Ratcliff commented that they would be seeking an adjournment to the Hearing and wished also to introduce further information to support their representations. The Sub Committee commented that they would deal with each request individually, firstly the adjournment and asked the Interest Parties to expand upon their request.

The Sub Committee was then informed that the rationale for the adjournment request was to enable the Interested Parties time to submit to the Hearing, further information and evidence to support their representations.

The Applicant's representative Mr Botkai, responded to the request by questioning whether the reasons provided for the adjournment was relevant as the Sub Committee must considered whether it was 'necessary' that the Hearing be adjourned, rather that purely 'desirable.' He also made reference to the fact that any additional information should only be introduced to the Hearing, following consent by all parties involved.

The Sub Committee decided to retire to close session to consider the adjournment application.

## **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.

### **33. Request for an Adjournment for the Application to a New Premises Licence – BP Oil UK Ltd – Tilgate Services Station**

The Sub Committee considered Regulation 12 of the Licensing Act 2003 (Hearings) Regulations 2005 and the representations made by both parties.

## **RESOLVED**

That the request for an adjournment be refused, as the Sub Committee felt that if there is documentary evidence or other information produced in written form by a party in support of their case; to which all of the parties give consent to, that would be something that the Sub Committee might consider. Otherwise the Sub Committee does not feel that it is 'necessary' to adjourn, considering that representations have already been made.

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

The Chair declared the meeting re-opened for consideration of business in public session and announced the Sub Committee's decision with regard the Interested Parties' application for an adjournment.

### **35. Application to a New Premises Licence – BP Oil UK Ltd – Tilgate Services Station**

Councillor Brown then invited the Interested Parties to present their second application, in relation to a request to bring forward additional information to the Hearing. The Legal Clerk informed the Sub Committee that any request for the introduction of new material, must seek agreement from all parties and also gain permission from the Sub Committee before it could be introduced. It was noted that Mr Botkai had not seen the proposed additional information and the Sub Committee allowed the Applicant's Representative to consider it.

Mr Botkai informed the Sub Committee that he did not accept the request that the additional information should be introduced. He commented that he was not blocking the new material to be difficult, instead he felt that many of the fears and concerns raised in the original representations and in proposed material, would be alleviated once he made his presentation on behalf of the Applicant, later in the meeting.

Following the conclusion of the requests, the Chair asked that the application be presented.

## **The Application**

Report ES/004 of the Council's Head of Regulatory Services was presented by Mike Lyons, the Senior Licensing Officer for Crawley Borough Council. The Sub Committee were guided through the report by the Senior Licensing Officer, who highlighted a number of paragraphs included within the report.

The Members were informed that on the 18 August 2008, BP Oil UK Ltd submitted an application to the Council for the grant of a licence for the above named premises in accordance with the provisions of the Licensing Act 2003, 'the Act'. The application was for the Supply of Alcohol from 08.00 – 23.00 Monday – Sunday together with Late Night Refreshment 23.00 – 05.00 Monday – Sunday. It was noted that it was proposed within the application that the premises 'Hours Open to the Public' were to be 24hours a day from Monday to Sunday.

It was highlighted that the application was advertised in accordance with legislation and the Council received no objections from the Responsible Authorities, including the Sussex Police. The Council did however receive from Interested Parties, a petition outlining 21 people who agreed with the submissions made within the petition. It was determined that 20 of those signatories were Interested Parties and as such the petition was a "relevant representation". The Council officers had formed the view that one of the signatories was not an interested party as the address given was not that of a person living in the vicinity of the premises. A letter to that effect has been sent to that petitioner.

It was noted by the Sub Committee, that section 2.2 of the report provided an outline of the concerns, in relation to the Licensing Objectives raised within the petition by the Interested Parties, those included:

- That there were already sufficient premises, that were open for 24 hours, that sold alcohol within the vicinity of the premises which already causes noise, aggressive behaviour and disturbance to residents and to grant this licence would further aggravate that problem.
- That there was a fear that if the licence was to be granted it would lead to an increase in criminal damage in the area.
- The disturbance would have a detrimental effect on the surrounding community which was made up of many elderly residents and families living with children and young babies.

The Licensing Officer then emphasised to the Sub Committee, that once a relevant representations had been made, it was the Licensing Authority responsibility to hold a hearing, where consideration would be made on the application and the relevant representations. With that in mind it was the Sub Committee's responsibility to consider the application before them, and, if required, to take any appropriate steps as they considered necessary for the promotion of the licensing objectives.

The Licensing Officer also highlighted paragraphs 3.5 and 3.6 of the report for the Sub Committee to note. Paragraph 3.5 stated that 'Section 176 of the Act states that no premises licence has effect to authorise the sale by retail or supply of alcohol on or from excluded premises. In this section 'excluded premises' means premises used primarily as a garage or which forms part of premises which are primarily so used. Premises are used as a garage if they were used for the retailing of petrol or derv;' and paragraph 3.6 stated that 'the Council has requested the applicant supply written documentation outlining the 'primary use' of the premises. This information has been refused to the Council and subsequently the Council were not able to determine the 'primary use' of the premises at this stage'.

The Licensing Officer then proceeded to inform the Sub Committee of the options available to them when in respect of the application, noting that any decision must be based upon the promotion of the four licensing objectives. The options were to:

1. Grant the application subject to:
  - i) conditions which were consistent with the operating schedule modified to such an extent as the authority considers necessary for the promotion of the licensing objectives, and any relevant mandatory conditions or,
2. Exclude from the scope of the licence any of the licensable activities to which the application related, or
3. To refuse to specify a person in the licence as the premises supervisor or,
4. Reject the application, giving reasons for doing so.

### **The Applicant**

Mr Botkai addressed the Sub Committee and commented before he presented the Applicant's application and tried to alleviate the concerns raised by the Objectors; he wished to deal with two paragraphs, 3.5 and 3.6, contained within the Licensing Authority's report. The issue contained within those paragraphs specifically related to Section 176 / 'Primary Use' and the fact that a premise whose 'primary use' was to sell petrol cannot sell alcohol. Mr Botkai informed the Sub Committee that he felt that they should not consider the concept of 'Primary Use' in their consideration of the New Premise License for the BP's Tilgate Service Station, as it was not within their jurisdiction to take that into account as a factor. The issue of 'Primary Usage' was a matter for the Applicant to prove when challenged, for licensing enforcement purposes, that the premise's use was not primarily for fuel.

Mr Botkai requested that the Sub Committee provide an indication as to whether they felt that the issue of 'Primary Use' would be a factor in their consideration of the application; as if they did he would have to change the nature of this Client's representation.

The Sub Committee agreed to the request and decided to retire to close session to seek their own legal advice on the issue of 'Primary Usage' and its impact and relevance upon the application.

### **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.

#### **35. Consideration on the relevance of Section 176 'Primary Use' on the New Premises Licence – BP Oil UK Ltd – Tilgate Services Station**

The Sub Committee sought legal advice in relation to 'Primary Use' issue, which included advice that any guidance should not override any of the statutory provisions contained within the Licensing Act 2003. Following their consideration, the Sub Committee concluded that the issue relating to the premise's 'Primary Use', was not included within the Sub Committee's jurisdiction and thus it was not a relevant factor for their consideration.

**36. Re-admission of the Public**

The Chair declared the meeting re-open for consideration of business in public session and announced the Sub Committee's decision that they would not take into account any reference to the premises 'Primary Use' when considering the application.

**37. Application to a New Premises Licence – BP Oil UK Ltd – Tilgate Services Station**

The Chair invited Mr Botkai to continue with his presentation of the Applicant's application.

**The Applicant**

Mr Botkai addressed the Sub Committee and commented that his Client would like to amend their application and remove the request for a licence for Late Night Refreshment. The reason for this amendment was that the Applicant was not intending to open the premise past 2200, which was its current closing time. However the Applicant would not be changing the opening times proposed within the application as the Sub Committee did not have the jurisdiction to limit the opening times.

Mr Botkai reminded the Sub Committee that the Hearing was not to judge planning related issues or to Review a Licence, but purely a Hearing for a new Premise Licence. With that in mind the Members must be mindful of what the Licensing Act 2003 emphasises, firstly that there was a presumption that Licences should be granted unless there was clear evidence to refuse, and that any decision must be both 'necessary' and 'proportionate'. Therefore, as the application before the Sub Committee was for a new Premise License and there was no representation from any of the Responsible Authorities, including the Police, how could any evidence of public nuisance be linked to the Premise. If there had been clear examples of disturbances caused by the Premise, once a licence was granted, then the Review process for re-examining the Premise License could be used. Mr Botkai highlighted Section P within the application to the Sub Committee which detailed how his Client was implementing various steps to promote the four licensing objective. Mr Botkai emphasised especially Part B of Section P, which detailed his Client's intentions with regard to the licensing objective of preventing crime and disorder, especially over the CCTV for the Premises.

Mr Botkai concluded that as there was no clear evidence against his Client not meeting the Four Licensing Objectives he hoped that the Sub Committee would therefore grant the Premise Licence to BP Oil UK Ltd for Tilgate Services Station.

**Objectors**

The Chair of the Sub Committee invited the Interested Parties to put across their case for objection to the new Premise Licence. Mr Agnew addressed the Sub Committee first and commented that most of the concerns raised by Local Residents related to the potential for BP Tilgate Service Station being open for twenty four hours a day and the servicing of late night refreshment until 0500. With the removal of the late night refreshment and noting that the Sub Committee was unable to limit the opening hour of the Garage, along with Mr Botkai's assurance that it was not BP's intention

presently to alter the current opening hours of 0600 to 2200, this meeting could have been avoided. However, he also asked why the Applicant had requested a liquor licence until 2300 if they intended closing the premise at 2200. The Chair invited the Applicant to respond, Mr Botkai commented that the reason for the additional hour was in case a customer was in the store prior to closing with the intention of purchasing alcohol and then it passes 2200, it would be illegal for the transaction to take place. The sale of alcohol license finishing 2300 negated that issue.

Mrs Ratcliff then addressed the Sub Committee and raised a number of the issues contained within the Interested Parties representation (Appendix C to the report), including the link of the garage selling alcohol and the potential for drink driving, the issue that in the vicinity there were at least three place to purchase alcohol on Tilgate Parade and a Pub next door. With those issues in mind, she questioned whether there was there a need for a further place that sold alcohol. Mrs Ratcliff also raised concern over the potential for an increase in noise affecting the surrounding area. The Sub Committee informed the Interest Parties that it was not in their remit to considered 'Supply and Demand' issues and again on the concept of the Drink Driving issue without any evidence of this occurring or Police concerns on the matter, it was unlikely to be a significant factor for their consideration.

In response to a query raised by the Interest Parties over the CCTV coverage outside of the premise, Mr Rajani BP's Site Operator commented that the CCTV covered the whole of the forecourt and the side of the buildings. Mr Botkai reminded the Sub Committee that the Police had not made a representation on the application and it would be their responsibility to raise any concerns on Crime and Disorder.

The floor plan (Appendix B to the report) as it stated '*entire store to be licensed for the sale of alcohol*' and an Interested Party questioned what was stopping BP from making the whole of the premise full of liquor for sale. In response Mr Botkai, informed the Sub Committee that it was not BP policy to include on the floor plans specifics to where exactly they intended to display the alcohol. The reason for this was that if the Applicant had done so and then wished to move the alcohol display unit, the Applicant would then have to make a request to the Licensing Authority for a variation to the Premise Licence, as the floor plans were included within the Licence.

Following the conclusion of all parties putting across their cases, the Sub Committee decided to retire to close session to consider the application before them for the new Premises Licence for BP Oil UK Ltd Tilgate Services Station.

## **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.

### **38. Application to a New Premises Licence – BP Oil UK Ltd – Tilgate Services Station**

The Sub Committee gave further consideration to the relevant representations which were made, considered all material before them and took into account the guidance issued by the Secretary of State under the Licensing Act 2003 and the Council's own Licensing Policy for Liquor, Late Night Refreshment and Regulated Entertainment

Licences 2008-2011. The Sub-Committee also considered the submissions made by Robert Botkai on behalf of the applicant.

## RESOLVED

- (1) That Mr Stuart Wright be specified in the licence as the Designated Premises Supervisor;
- (2) That the application submitted by the Applicant (BP Oil UK Limited) for the granting of a new premise licence under the Licensing Act 2003 in respect of the Tilgate Service Station, be granted for the following licensable activities, subject to the conditions contained within the operating schedule:

### Permitted Hours for Licensable Activities:

#### **Hours Premises can be Open to the Public**

<u>Permitted Days of Operation</u>	<u>Permitted Hours of Operation</u>
Monday to Sunday	00.00 – 24.00

#### **The Supply of Alcohol**

<u>Permitted Days of Operation</u>	<u>Permitted Hours of Operation</u>
Monday to Sunday	08.00 – 23.00

## 39. Re-admission of the Public

The Chair declared the meeting re-open for consideration of business in public session and announced to the Applicant (BP Oil UK Ltd), their Representatives and to the Interested Parties present the following decision:

That the Licensing Sub-Committee had decided to grant the application for a new Premises Licence to the Tilgate Service Station, subject to the conditions detailed within the operating schedule which accompanied the application, and as amended by the applicant, namely:

- That the provision of late night refreshment be removed from the list of licensable activities.

The Sub-Committee had taken into account the following considerations when making its decision:

- There was no relevant representation made by any of the responsible authorities, especially the police;
- There was no evidence before the Sub-Committee that the granting of the licence would result in an increase in crime and disorder;
- The objections that have been raised by the interested parties, mainly their fears about the increase in crime and disorder, have mostly been alleviated by the removal of the licensable activity of providing late night refreshment.



**40. Closure of Meeting**

With the business of the Sub-Committee concluded, the Chair declared the meeting closed at 8.34 p.m.

A G Brown  
**Chair**