

Crawley Borough Council

Minutes of Licensing Sub Committee Tuesday 7 December 2010 at 6.30pm

Present:

Councillors V S Cumper, B McCrow and D J Shreeves

Officers Present:

Tony Baldock	Group Manager for Food, Licensing and Occupational Health
Mike Lyons	Senior Licensing Officer
Mez Matthews	Democratic Services Officer
Astrid Williams	Legal Clerk

Apologies for Absence:

Councillor J L Millar-Smith

Also in Attendance:

Applicant	Martin Amphlett Store Manager (Morrisons - Broadfield Barton)
	Robert Thomson Solicitor representing Applicant (WM Morrison Supermarkets Plc)
Interested Parties	Jasvinder Lal Interested Party
	David Powdrill Interested Party
	Councillor A J E Quirk County Councillor for Broadfield Borough Councillor for Broadfield South Interested Party

14. Appointment of Chair

RESOLVED

That Councillor D J Sheeves be appointed Chair for the meeting.

15. Members' Disclosure of Interests

The following disclosures of interests were made by Members:-

Member	Minute Number	Subject	Nature of Disclosure
Councillor V S Cumper	Minutes 16 and 17	Application to Vary the Premises Licence for Morrisons – 3 Broadfield Barton, Broadfield	Personal and Non Prejudicial Interest in the item as an objector (Councillor Quirk) was a fellow Councillor.
Councillor B MeCrow	Minute 16 and 17	Application to Vary the Premises Licence for Morrisons – 3 Broadfield Barton, Broadfield	Personal and Non Prejudicial Interest in the item as an objector (Councillor Quirk) was a fellow Councillor.
Councillor D J Shreeves	Minute 16 and 17	Application to Vary the Premises Licence for Morrisons – 3 Broadfield Barton, Broadfield	Personal and Non Prejudicial Interest in the item as an objector (Councillor Quirk) was a fellow Councillor.
Councillor D J Shreeves	Minute 16 and 17	Application to Vary the Premises Licence for Morrisons – 3 Broadfield Barton, Broadfield	Personal and Non Prejudicial Interest in the item as he was a personal licence holder.

16. Application to Vary the Premises Licence for Morrisons – 3 Broadfield Barton, Broadfield

The Sub Committee considered an application to vary the premises licence held in respect of Morrisons, 3 Broadfield Barton, Broadfield, 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 which would be followed during the meeting, and seek clarification of any points contained within the report and application. At the request of the Sub Committee, the Legal Clerk asked the Applicant to clarify which conditions they were seeking to remove, and which new conditions they were seeking to introduce. It was agreed that Mr Thomson would provide clarification when he addressed the Sub Committee.

Report PES/014 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

Mr Lyons presented the report to the Sub-Committee. On the 22 October 2010, the premises licence holder for WM Morrison Supermarkets Plc, 3 Broadfield Barton, Broadfield, Crawley had submitted an application to the Council for the variation of an existing licence for the above named premises in accordance with the provisions of the Licensing Act 2003. A copy of the application was set out in Appendix A to the report, which included information provided by the Applicant as to how the four licensing objectives would be promoted.

The application was for a change to the opening hours and an extension of the licensing hours for the supply of alcohol. The Applicant also sought to amend the conditions attached to the current licence. A copy of the existing premises licence and plans were set out in Appendix B to the report.

It was confirmed that the application had been advertised in accordance with legislation. The Sub Committee noted that six representations had been submitted by potential interested parties, and that paragraph 2.3(1) of the report should be amended accordingly. The Sub Committee was informed that of those, three were not 'relevant representations' for the purposes of the Act, as they did not refer to the likely effect of the grant of the application on the promotion of the licensing objectives. The other three relevant written representations had been made on the basis that the application did not promote some of the licensing objectives and those were set out in Appendices C, D and E to the report.

The Senior Licensing Officer, reminded the Sub Committee of the options available to them in respect of the application, and reminded the Sub Committee that any decision must be based upon the promotion of the four licensing objectives. The options were to:

1. modify the conditions of the licence; or
2. reject the whole or part of the application.

The Applicant

Mr Thomson addressed the Sub Committee and said he would be acting on behalf of the Applicant. Mr Thomson provided clarification in relation to which of the current conditions the Applicant sought to remove, and which new conditions they sought to introduce. The Sub Committee noted that the Applicant sought to remove those conditions summarised in the schedule attached to the application form (Appendix A to the report) which were those in Annex 2 of the existing licence (Appendix B to the report). The Applicant did not seek to amend or remove any of the conditions detailed in Annex 1 and Annex 3 of the existing licence (Appendix B to the report), and the additional conditions proposed by the Applicant were detailed in Schedule P of the application form (Appendix A to the report). The Sub Committee confirmed that it was happy with the clarification.

Mr Thomson confirmed that the Applicant sought to amend the hours as detailed in paragraph 1.2 of the report. The Sub Committee noted that additional hours had not been sought by the previous licence holder when the licence had been converted under the grandfather rights provision. Mr Thompson explained that WM Morrison Supermarkets Plc Head Office were now conducting a housekeeping practice and were applying for standardised opening hours across all Morrison stores to allow an element of flexibility for Store Managers. It was envisaged that the proposed opening hours would enable the Store Manager to open earlier at times of high demand so that consumers could fulfil a complete shopping trip (ie alcohol as well as groceries). The

proposed hours would create a net gain of 12 hours per week when Sunday trading hours were taken into account. Mr Thomson confirmed that although it was proposed that the supply of alcohol and opening times would officially be from 06.00hr to 23.00hr Monday to Sunday, the store would still be bound by Sunday, Public Holiday and Bank Holiday trading legislation. Mr Thomson stated that there were no planning restrictions on the opening hours.

Mr Thomson informed the Sub Committee that many of the current conditions of the licence were cumbersome, unnecessary and duplicated. Mr Thomson drew the attention of the Sub Committee to paragraph 4.10 of the report which stated that any "conditions attached to the licences and certificates must be tailored to the individual style and characteristics of the premises and event concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions".

Mr Thomson also drew the Sub Committee's attention to Annex 3 of the existing licence (Appendix B), which were conditions imposed after a review hearing in 2009, and reminded Members that the Applicant did not propose to amend or remove the conditions contained within the Annex. Mr Thomson suggested that Morrison's current practices went beyond what was required by the first two conditions in any event. Mr Thomson also stated that the use of a 'Challenge / Task 25' policy, which was a requirement of the fourth condition under Annex 3, was also WM Morrison Supermarkets Plc company policy.

Mr Thomson outlined the practices adopted by WM Morrison Supermarkets Plc which promoted the four licensing objectives. The Sub Committee was informed that the store used electronic point of sale till prompts to check the age of individuals purchasing alcoholic products. All cashiers received training in relation to the sale of alcohol and refresher training was conducted on a quarterly basis. A refusals log was maintained and was checked weekly by the Store Manager, and a suitable CCTV system was in operation on the premises. Members noted that the premises had multiple Personal Licence Holders, and that one Personal Licence Holder was on the premises at all times during opening hours which went well beyond the existing condition.

Mr Thomson drew the Sub Committee's attention to the fact that no relevant representations had been made by any of the responsible authorities, and had the Police and other authorities had concerns about the application, they would have voiced those and that was an important factor. He informed the Sub Committee that since WM Morrison Supermarkets Plc had taken over the premises the Police had not raised any concerns.

Mr Thomson considered the objection from Councillor Quirk (Appendix C to the report) and stated that there was no evidence to suggest a causal link between the store and anti social behaviour in the area and he suggested that demand for alcohol in the area should not be a relevant consideration for the Sub Committee.

Mr Thomson considered the relevant representation made by Broadfield Barton Property Management Limited which represented the retailers and properties on the south side of Broadfield Barton (Appendix D to the report) and reiterated that there was no evidence to suggest that any anti social behaviour or public nuisance in the area was due to the sale of alcohol at Morrisons as there were other licensed premises in the vicinity. He stated that any decision made by the Sub Committee would have to be evidence based and in the absence of evidence it would not be appropriate to refuse the application. He referred the Sub Committee to the High Court decision in the Thwaites case in this regard.

The Sub Committee was informed that the pricing policy of the store was set by Head Office and that there was no evidence that the company's pricing policy had an effect on people in the area. Mr Thomson drew the Sub Committee's attention to paragraph 2.18 of the Crawley Borough Council Licensing Policy which stated that "there will need to be shown a clear causal link between sales promotions or pricing discounting and levels of crime and disorder on or in the vicinity of the premises". Mr Thomson reiterated that had the Police considered there to be a link between the sale of alcohol at Morrisons and anti social behaviour the Police would have submitted an objection to the application. Mr Thomson informed the Sub Committee that the sale of alcohol at Morrisons could not be the cause of public disturbance in the area as the majority of the anti social behaviour took place between 4am and 7am, when Morrisons was not open. Mr Thomson stated that it was company policy not to serve alcohol to people who appeared to be intoxicated and reiterated that the proposed change in hours was solely to enable a the Store Manager to take a flexible approach to opening times.

Mr Thompson also referred to the concern raised in the relevant representation by Broadfield Barton Property Management Limited relating to possible increase in litter as a result of the application, and he stated that there was no evidence to suggest that Morrisons was responsible for litter in the area and that such a matter was beyond the control of the store and should therefore not be a consideration of the Sub Committee.

Mr Thomson considered the relevant representation made by the proprietor of the Broadfield Premier Store (Appendix E to the report) and again stated that there was no evidence to suggest that there was a link between the sale of alcohol at Morrisons and crime in the vicinity. Mr Thomson suggested that if the application to vary the opening hours were granted it would have minimal impact on this type of behaviour. Mr Thomson was of the view that longer opening hours could even reduce anti social behaviour as the increase in the number of people shopping in the area would act as a deterrent to individuals responsible for public disturbance and if the store was open, then there would also be staff present.

In closing, Mr Thomson stated that Morrisons was managed effectively and had many controls in place with relation to the sale of alcohol and that the change in hours, if granted, would have little impact on anti social behaviour. Mr Thomson reminded the Sub Committee that the Applicant requested that the conditions detailed in Annex 2 of the current licence (Appendix B to the report) be removed as they were cumbersome, unnecessary and duplicated statutory guidance. He also reminded the Sub Committee that no objection had been received from any responsible authority and that the lack of such objections should carry significant weight when the Sub Committee considered its decision.

Mr Thomson was of the opinion that the Sub Committee should grant the proposed variation to the licence and suggested that a responsible authority could call for a review of the premises if it deemed it necessary. Mr Thomson reminded the Sub Committee that the statutory guidance stated that licensing conditions must necessary and proportionate, and that the licensed hours of a store should reflect the store's opening hours. The Sub Committee was informed that it was not necessary for the store to open 24 hours a day (as was currently permitted) and Mr Thomson stated that the proposed variation in hours would meet the needs of the store.

Interested Parties

Councillor Quirk addressed the Sub Committee as both a County Councillor and Borough Councillor and he suggested that there were currently too many licensed premises in the vicinity. He was disappointed that Morrisons proposed to increase the number of hours in which it was able to sell alcoholic products but was pleased that

the company did not propose to open at 06.00hr on a regular basis and hoped that would be the case. Councillor Quirk hoped that the store would do its utmost to ensure that alcohol bought on the premises was not passed on to underage individuals. He was disappointed that pricing policies were controlled by WM Morrison Supermarkets Plc Head Office given the unique location of Broadfield Barton. Councillor Quirk informed the Sub Committee that the Police patrolled Broadfield Barton on a regular basis and that the availability of alcohol within the vicinity was a problem, and he was therefore of the opinion that the Broadfield store should have control over its own pricing policy. Councillor Quirk summarised by stating that his main objections to the application were that there were too many outlets within the vicinity which sold alcohol and he was of the opinion that Morrisons was the main source of alcohol.

Mr David Powdrill addressed the Sub Committee and spoke on behalf of Broadfield Barton Property Management Limited. He referred to Mr Thomson's earlier statement that there was no evidence to suggest that the anti social behaviour in the area was due to Morrisons. Mr Powdrill was of the view that it was impossible to have evidence that an increase in the hours Morrisons would be able to sell alcohol would exacerbate public nuisance until the new hours were in force. Mr Powdrill was of the view that the Morrisons store would open for the full opening hours of 06.00hr to 23.00hr each day if the application was granted.

Mr Jasvinder Lal addressed the Sub Committee as the proprietor of the Broadfield Premier Store and stated that he was concerned at the proposal to open the Morrisons store from 06.00hr.

Members' Questions

The Sub Committee asked the Applicant to clarify a number of issues. This included confirming the number of Personal Licence Holders appointed at the premises, which was answered as four. The Applicant also confirmed that staff received manual training on the premises and that the refusals register was checked on a weekly basis by the Store Manager although no-one had ever requested to view the register. In relation to the till prompt, the Applicant confirmed that it was possible to produce an audit trail of all the 'till prompted' transactions.

The Applicant informed the Sub Committee that WM Morrison Supermarkets Plc conducted random tests on itself with regard to purchasers under the age of 25 and that the Broadfield Store had passed a Trading Standards test two months ago. The Sub Committee noted that the staff were trained to detect body language which suggested that an individual was purchasing alcoholic products for consumption by another (underage) individual. Following a question from the Sub Committee, the Applicant confirmed that the store currently employed two security guards at the premises and stated that the store would only accept identification showing proof of age if it had both a photograph and a hologram. The Applicant stated that the store had a good rapport with the local Police Community Support Officers who made the Store Manager aware of individuals who, in their opinion, should not be sold alcohol. Following a question from the Sub Committee, the Applicant confirmed that the store only sold alcoholic cans in multi-packs and not individually.

The Applicant confirmed the actual store opening hours were 08.00hr to 20.00hr Monday to Wednesday, 08.00hr to 21.00hr Thursday and Friday, 08.00hr to 20.00hr Saturday, and 10.00hr to 16.00hr Sunday. The Applicant also confirmed that the application before the Sub Committee sought to vary the hours of the licence for the store to beyond those times although there were no plans to change the store opening times; the extended hours would allow the store to open earlier in times of peak

demand. The Applicant informed the Sub Committee that a regular increase in opening hours was not necessary as the store was generally quiet after 20.00hr.

The Applicant reminded the Sub Committee that the store would still be bound by Sunday, Public Holiday and Bank Holiday trading legislation. The Sub Committee noted that the opening hours identified in Section O of the application (Appendix A to the report) was based on a "worst case scenario" and that such hours would not be operated on a regular basis, but would enable allow the Store Manager to open the store for longer during periods of high demand. The Applicant confirmed that he understood that the store was currently able to open for 24 hours, and that the proposal set out in Section O of the application would reduce the number of hours the store was able to open.

The Applicant informed the Sub Committee that WM Morrison Supermarkets Plc was a responsible company, and that although the pricing policy was determined by Head Office, certain promotions were not available in areas of deprivation and the company was not looking to enter into a 'pricing war' with its competitors.

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.

17. Application to Vary the Premises Licence for Morrisons – 3 Broadfield Barton, Broadfield

The Sub Committee gave further consideration to the application and to the matters raised at the meeting. The Sub Committee took into account how the Licensing objectives had been promoted in the application and the submissions made by the Applicant and the Interested Parties.

RESOLVED

That the application submitted by the Applicant (WM Morrison Supermarkets Plc) to vary the licence under the Licensing Act 2003 in respect of WM Morrison Supermarkets Plc, 3 Broadfield Barton, Broadfield, Crawley, be granted as follows:

1. That the hours of the varied premises licence shall be:
Opening hours: 06.00hr to 23.00hr
Sale of alcohol for consumption off the premises: 06.00hr to 23.00
2. That conditions 1 to 19, 23 to 30 and 32 to 35 in Annex II to be removed from the licence.
3. That the remaining existing conditions in Annex II are to remain as conditions on the licence as follows:
 - (a) Current condition numbered 20 in Annex II – to remain as a condition of the licence.

- (b) Current condition numbered 21 in Annex II – to remain as a condition of the licence but modified as follows:

“Notices located at the point of sale checkouts and points of display of alcohol advising customers of our policies and their obligations relating to alcohol sales.”

- (c) Current condition numbered 22 in Annex II – to remain as a condition of the licence.
- (d) Current condition numbered 31 in Annex II – to remain as a condition of the licence.

4. In part (e) of Part P of the application to be amended as follows:

“All staff will receive suitable training (including refresher training) in relation to the proof of age “Task 25” scheme to be applied on the premises. The following forms of identification are acceptable: photo driving licence, passport, proof of age standards scheme (pass) card and any other locally or nationally approved form of identification with both a photograph and hologram.”

(For the avoidance of doubt: the Sub-Committee’s intention in modifying those condition was that proof of age standards scheme (pass) cards as well as any other locally or nationally approved form of identification must have both a photograph and hologram.)

and

“Till prompts are in use at the store” – be removed as this is more adequately dealt with by existing condition 31 in Annex II which is to remain a condition of the licence.

5. The remaining conditions in Annex II may be renumbered appropriately by the licensing officers when re-issuing the varied licence.

18. 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 with regard to the licence application to the Applicant and the Interested Parties.

In announcing the decision the Chair reported that the Sub-Committee had given consideration to the relevant representations made by the three Interested Parties and appreciated the interest in the local area which each of them expressed. However, the Sub-Committee found that there was insufficient evidence to persuade it that there was any crime and disorder linked with the current sale of alcohol from the premises and was even less persuaded that there was any evidence which indicated that an increase in the licensable activity hours would likely result in an increase of crime and disorder, or nuisance or cause harm to children or not promote the public safety objective. Further, the Sub-Committee was mindful that there had been no relevant representation made by any of the statutory bodies dealing with crime and disorder, nuisance, public safety and protecting children, in particular the Police being the body which the licensing authority had specifically stated in its policy would be the main source of advice on matters relating to the prevention of crime and disorder.

Accordingly the Sub-Committee decided that it had no good reason to consider refusing that part of the application, and so the variation sought in Parts M and O of the application were granted.

In relation to the variation to the conditions of the licence, the Sub-Committee considered the submissions made on behalf of the Applicant and noted that it had received no specific representations in opposition to the proposed changes to the conditions, except that made by DMH Stallard on behalf of Mr Powdrill in which it was stated that it was not clear as to what was being sought.

The Sub-Committee agreed in part with the representations made on behalf of the Applicant, that some of the conditions in Annex II were repetitive and cumbersome, but did not agree wholly with this. The Sub-Committee decided that certain of the existing conditions in Annex II were to be removed (as specified above in minute 17) because they agree that those conditions are not necessary for the promotion of the licensing objectives either because they are burdensome, are otherwise covered in the proposed new conditions consistent with the operation schedule to the application, or otherwise addressed in other legislation.

However the Sub-Committee decided that a combination of the balance of the conditions currently in Annex II with some modifications, together with conditions consistent with part P of the application (also with modifications), were necessary for the promotion of the 4 licensing objectives (these are also specified above in minute 17).

The Chair, on behalf of the Sub-Committee, thanked those who attended the meeting and provided helpful submissions to assist it in coming to its decision.

Lastly, the Chair explained that in conclusion the Sub-Committee decided to grant the application to vary the premises licence subject to modifications (as set out above) which the Sub-Committee felt were necessary for the promotion of all 4 licensing objectives.

19. Closure of Meeting

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

D J Shreeves
Chair