

MINUTES of a **MEETING** of the **LICENCING SUB COMMITTEE** held on 25 July 2024 at 2.30 pm

**Present
Councillors**

J Buczkowski, F J Colthorpe and
L G J Kennedy

**Also Present
Officer(s):**

Deborah Sharpley (Operations Manager Legal Services and Monitoring), Thomas Keating (Specialist Lead (Licensing) Officer), Philip White (Specialist Licensing Assistant) and Angie Howell (Democratic Services Officer)

10 APOLOGIES

There were no apologies.

11 ELECTION OF CHAIR

Councillor L Kennedy was elected as Chair of the Sub-Committee.

12 DETERMINATION OF A PREMISES LICENCE APPLICATION FOR ASDA EXPRESS PFS, EXETER ROAD, CREDITON. EX17 3BX

An application had been received for a new premises licence for Asda Express PFS, Exeter Road, Crediton, EX17 3BX

The Chairman introduced the Members of the Sub-Committee and officers present and explained the process for the Hearing.

There were no declarations of interest.

The Licensing Sub-Committee agreed that the meeting should be heard in public session and that there would be no time limit for speakers.

Mr Hughes-Davies then asked (1) whether information had been provided about the primary use figures and Mr Lanyon asked (2) whether the figures were based on footfall or turnover.

Councillor L Kennedy advised that figures had been provided and that the second question would be answered during the hearing.

The Specialist (Licensing) Officer outlined the contents of the report as follows:-

- The application for a new premises licence was submitted by Euro Garages Limited.
- The application was for late night refreshments for indoor and outdoor and for the supply of alcohol for consumption off the premises.
- Following receipt of representations the Licensing Team requested further information from the applicant with regard to primary use.
- Section 4 of the report outlined the 4 licensing objectives. Those being the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm.
- The applicant had provided information and proposals on this and had summarised the steps they intended to take which were:
 - (i) The provision of training for relevant staff working at the premises, including those that sold alcohol.
 - (ii) Spirits would be displayed behind the counter (this did not apply to pre-packaged gift sets which may contain a spirit miniature).
 - (iii) No miniature bottles of spirits would be sold in the shop store other than those within a packaged gift set.
 - (iv) A CCTV system; a till prompt for the sale of alcohol, and the adoption of a Challenge 25 proof of age scheme.
 - (v) Notices would be displayed on the premises advising customers of the Challenge 25 policy.
- There had not been any representations made from Responsible Authorities.
- The Licensing Team had also contacted the Police to ensure there were no issues. A reply from the Police had been received which read as “ *We don't really get any issues – just your usual, infrequent 'Bilking' (fuel thefts) and shoplifting and one of the team leaders has had some issues with a local nominal that lives close by to the Shell Garage. We are not aware of any real 'crime and disorder issues'.*”
- The Section 182 Guidance advised that the Police were the main source of advice on crime and disorder.
- Copies of the initial representations made had been sent to the applicant and the Sub-Committee had received them as part of the agenda pack.
- In addition, information provided in response to the hearing notice had also been supplied to the Sub-Committee.
- The importance of the decision of the Sub-Committee being made on the individual merits of the case and the licensing objectives.
- The options available to the Sub-Committee were:-
 - (i) Grant the licence as applied for.
 - (ii) Granting the licence subject to appropriate modifications necessary for the promotion of the licensing objectives.
 - (iii) Excluding from the scope of the licence any of the licensable activities to which the licence relates.
 - (iv) Refusing to specify a Designated Premises Supervisor.
 - (v) Rejecting the application.

Questions received from other parties:-

- Whether any shoplifting had been reported? It was explained that the Police had responded saying that shoplifting was not an issue there was just the usual infrequent 'bilking' (fuel thefts) and shoplifting.
- Whether food/drink being supplied was in contravention of the law given the current application for consuming 'on and off premises'? The Specialist (Licensing) Officer indicated that the question was better directed to the applicant.

The applicant's representative, Mr Taylor, informed the Sub-Committee of the following:-

- The applicant had provided figures on primary use.
- None of the representations received had referred to the primary use figures.
- Those primary use figures would continue to be monitored.
- There were over 1000 stores including Euro Garages with several million customers a week. He had never needed to stand in front of a sub-committee to defend ASDA as they had never faced review proceedings or been prosecuted.
- The premises already operated as an ASDA store with staff trained to ASDA standards.
- The premises had traded as a convenience store and had been open for 24 hour business since November 2015.
- Mr Irving was the Area Manager and had been since 2015.
- There had not been any complaints received from local residents during this time.
- The application was for the ability to sell wine and beer alongside groceries.
- Late night refreshments was limited to the provision of hot drinks.
- Steps to promote the licensing objectives included:
 - (i) Digital CCTV.
 - (ii) Staff training.
 - (iii) Proxy sales.
 - (iv) Spirits and high value products to be displayed behind the counter.
 - (v) The range of drinks to be sold complemented the groceries and ready meals that were available such as wine and beer. There would be no sales of white ciders and half bottles of wine.
- With regard to age restrictions and the Challenge 25 policy – this was supported by till prompts and individual testing purchases. There had been 2 such events recently. An independent firm had sent in young people to buy vapes and the garage had passed both times in that they did not sell to underage people.
- The premises operated through a night hatch during the hours of 10pm and 5am. The only people admitted during these times would be the emergency services.
- The premises already operated for 24 hours a day and there had been no representations from any of the Responsible Authorities. Concerns about anti-social behaviour was not shared by the Police and despite being contacted by the Licensing Team the Police still did not object to the application.

- With regard to drink driving – all supermarkets and restaurants were all drive-up venues and there was no evidence to suggest that the granting of a licence encourages this.
- ASDA were satisfied with the primary use figures received from Euro Garages Ltd and the figures from the primary use test. This was monitored and would continue to be monitored. This information could also be shared with the Licensing Authority but not to share with members of the public due to the commercially sensitive information.

The following questions/statements were raised by Other Parties:-

Mr Lanyon

- In the additional information he provided he did raise the issue of primary use.
- People in the area were not aware of the situation until after the due date for submitting representations. It was important that the Sub-Committee were aware that there were lots of other people that would have objected to the application.
- Astounded by the lack of comments by the Police.
- There were no other premises in Crediton that were permitted to sell alcohol through the night. Concerns were raised that this would open the door for other applications. Could the hours not be reduced when alcohol was sold?

Mr Davies

- Had concerns as a resident and as an employee of 7 years.
- Training was non-existent.
- Most problems occurred at night when people were intoxicated or on drugs. When working through the night he had never used the night hatch only when the store was being refurbished.
- There was no space to sell the alcohol behind the counter.
- The Police were often coming to Crediton to deal with people that were causing problems in the streets.
- Concerned that people would now migrate to the garage.
- CCTV was poor on the periphery and he hoped that this could improve significantly.
- Most problems occurred when staff came to question people under the care of duty.

Mr and Mrs Whitby

- They have owned Taw Vale Bed and Breakfast for the past 30 years.
- Just outside of the CCTV area was where problems with confrontational people were getting worse due to car parking issues despite chains being put across private driveways
- At the front entrance there was seating where people congregate to consume food which could be noisy with people swearing up to 4am.
- The litter was picked up by volunteers, as there was often bottles, smashed glass and general litter. People were also urinating and defecating in the car park area.

Mr Hughes-Davies

- Concerned that as this would be the only source of purchasing alcohol through the night that this would create more disturbance, noise and litter.
- Suggested that the licence ran from 5pm-11pm or midnight.

The following questions/statements were raised by the Sub-Committee:-

- How the primary use figures were monitored and how often? It was explained by the applicant that ASDA had never been reviewed before. This was constantly monitored - the current figures showed that the primary use was that of a convenience store, from every transaction made it could be seen if it was for fuel, convenience or a bit of both. By adding alcohol it would further drive the convenience sales. The figures would be monitored quarterly.
- Whether hot food was sold as part of the late night provision? It was confirmed that it was only hot drinks.
- How did the night hatch work? It was explained that when the night shift start the front doors are locked and secured. There was a hatch that customers used and could speak through a microphone.
- What was the coverage of the CCTV? It was explained that the whole forecourt, the side where there was car parking, inside the store and the night hatch was covered.

The Chair invited all parties to summarise:-

The applicant asked if there was sufficient evidence or reasoning to restrict the hours. He highlighted that the Home Office section 182 Guidance stated that a Licensing Authority would need to look at evidence to see if there was good reason to refuse the application or to restrict the hours.

He also outlined the following:-

- That ASDA were a major operator with vast experience and a spotless track record.
- That the Company worked in partnership with local authorities and had a robust package that addressed the licensing objectives.
- There were no concerns from the Responsible Authorities regarding the granting of a licence for 24 hours.
- Local people had concerns but this was not evidence.
- There was no evidence that the sale of alcohol from any ASDA store caused problems here or elsewhere.
- Could see no reason or what difference it would make if wine or beer was sold at times when the premises were open.
- If there was good reason to restrict then this would be acceptable to ASDA but as there were not any good reasons the licence should be granted for 24 hours.

Mr Lanyon explained that due to the low level of policing they were not aware of the problems and that residents were fed up of calling the Police and getting no response. Shouting at night continued until 4am – if the Police were called they would arrive too late as the people would have moved on by then.

Mr Davies explained that he had called the Police 4 times in the past year. However by the time the Police arrived it was 2/3 hours later and the problem had been resolved by then.

Members of the Sub-Committee then retired to reach a decision in private accompanied by the Council's representatives from Legal and Democratic Services.

The Sub-Committee returned and the Chairman made the following statement:-

In making its decision the Sub-Committee took into account the relevant legislation, the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003, the Council's Statement of Licensing Policy, the report of the Licensing Officer, the relevant representations submitted prior to the hearing and the presentations of those present at the hearing today.

In particular, the Sub-Committee noted the following:

- The Responsible Authorities e.g. the Fire Service, Environmental Health etc. made no representations to the application.
- The relevant concerns about possible noise nuisance, increased crime and disorder and public safety in the representations received; and additional information provided at the hearing today.
- That 4 of the 5 representations received suggested restricting the times for late night refreshment.
- The proposals offered by the applicant in section M of the application to promote the licensing objectives.
- The information from the applicant that the figures were monitored on a quarterly basis and it would be picked up if the figures fell below the necessary use.
- The information provided by the applicant with regard to primary use. The Sub-Committee agreed that the 51% was not high and the projected figure of 54% was at best unproven, and the Sub-Committee would feel reassured by the applicant's offer of providing quarterly figures to the Licensing Authority for 18 months.
- The Sub-Committee were concerned about the evidence given by Robert Davies in relation to not using the night hatch and his concerns about the coverage of the CCTV system. The Sub-Committee would encourage the applicant to consider these issues in relation to both public and employee safety.
- The direct evidence of Mr Robert Davies and Mr Peter Whitby as to incidents of crime and disorder and nuisance; and also, the hearsay evidence provided by the other attendees.
- The fact that the Police had made no representations about the application as applied for, that they had no objections to the hours sought; and had advised that they had no real concerns when approached.

RESOLVED that:-

The application for the premises licence with the additional condition about the provision of quarterly information to the Licensing Authority be granted as applied for. The wording to be resolved between the Licensing Authority and the applicant.

Reasons for the decision:

1. The information provided about the intensity of customer use had satisfied the Sub-Committee that the premises was not an excluded premises in terms of s176 Licensing Act 2003.
2. The Sub-Committee was of the opinion that there was no overriding licensing objective which supported the refusal of the application for the premises licence.

While the Sub-Committee was sympathetic to the concerns raised but concluded that no evidence of sufficient weight had been provided to raise concerns in relation to the licensing objectives.

The Sub-Committee would like to remind the parties that should future concerns arise the matters should be reported to the Police and the Licensing Authority to deal with such matters.

The Legal Representative then outlined the rights of appeal to the Magistrates' Court and stated that formal notification would be sent in writing to all parties.

(The meeting ended at 5.06 pm)

CHAIR