



LICENSING AND GAMBLING SUB COMMITTEE

MINUTES OF THE MEETING HELD AT PENALLTA HOUSE, YSTRAD MYNACH ON THURSDAY, 22ND NOVEMBER 2018 AT 10.00 AM

PRESENT

Councillor D.W.R. Preece - Chair

Councillors:

J. Ridgewell, W. Williams

Together with:

L. Morgan (Licensing Manager), K. Hopkins (Senior Licensing Officer), S. Lewis-Williams (Licensing Officer), T. Rawson (Solicitor), E. Sullivan (Senior Committee Services Officer) and R. Barrett (Committee Services Officer)

Representing Trading Standards

T. Keohane (Senior Trading Standards Officer)

Representing Child Protection

D. Lewis (Child Protection Co-Ordinator)

Representing the Applicant

Mr B. Griffiths (Asda Stores Ltd), Mr R. Taylor (Gosschalks Solicitors)

Representing Other Persons

Mr E. Serebro (Local Resident)

1 APOLOGIES FOR ABSENCE

There were no apologies for absence received.

2 DECLARATIONS OF INTEREST

There were no declarations of interest received at the commencement or during the course of the meeting.

3 APPLICATION TO VARY A PREMISES LICENCE IN RESPECT OF ASDA STORES LTD, PONTYGWINDY ROAD, CAERPHILLY

The Chair opened the meeting and introductions were made.

The Legal Advisor to the Sub Committee outlined the procedure for the meeting and reported that Members had previously familiarised themselves with the report of the Licensing Manager, the premises application and supporting documentation, together with the written representations of Responsible Authorities, and from local residents and local members (as defined as Other Persons in accordance with the Licensing Act 2003) who were objecting to the application.

Mr Lee Morgan (Licensing Manager) presented the report and outlined the application submitted by Asda Stores Ltd, Pontywindy Road, Caerphilly, to vary a premises licence in order to permit the following licensable activities:-

Supply of Alcohol

- Monday to Sunday inclusive 00.01 to 00.00

Late Night Refreshment

- Monday to Sunday inclusive 23.00 to 05.00

Members were advised that the premises was seeking to extend its existing licensed hours, (which currently end at midnight) to 24 Hours in respect of the supply of alcohol and 05.00 for late night refreshment.

The Sub Committee were referred to the representations received in relation to the application from Responsible Authorities. Gwent Police and Environmental Health had made no objections to the application, and the applicant had mediated on and agreed to the proposed conditions offered by Trading Standards and Child Protection. During the consultation period, a representation was received from local members and ten representations from local residents. Copies of the representations were attached to the report that was circulated with the agenda.

Attention was drawn to the local policy considerations and national guidance as set out in the report and to the way in which the Sub Committee would deal with the application. It was explained that the Sub Committee must have regard to all the representations made and to the evidence heard, and take such steps as is considered necessary for the promotion of the licensing objectives. Members were directed to the recommendation set out in the Licensing Manager's report, which recommended that the variation be granted subject to agreed conditions in respect of the prevention of underage sales training and the Challenge 25 policy. The Sub Committee were reminded that this was purely a recommendation and that they should take into account all the information before them when making their decision.

All parties present were afforded the opportunity to ask questions and representations were then invited from Responsible Authorities.

Mr Tim Keohane (Senior Trading Standards Officer) explained that the representation from Trading Standards was restricted to the Protection of Children from Harm Licensing Objective. He confirmed that the applicant had agreed to suggested additional conditions in respect of the prevention of underage sales training and the Challenge 25 policy.

There were no questions received and representations were then invited from Child Protection.

Mrs Deborah Lewis (Child Protection Co-ordinator) explained that the representation from Child Protection was also related to the Protection of Children from Harm Licensing Objective. The applicant had also responded to them to agree suggested additional conditions regarding the prevention of underage sales training and the Challenge 25 policy.

There were no questions received and representations were then invited from Other Persons.

The Sub Committee noted the representation from local members (comprising two county councillors and a community councillor) in objection to the application to vary the premises licence.

Mr Eric Serebro (Local Resident) then addressed the Sub Committee in respect of his representations and those made by his partner.

Mr Serebro explained that he lives on Pontygwindy Road in Caerphilly and is subject to noise pollution from public houses in the area, a local car wash, and speeding motorists on the road. He acknowledged that these problems are peripheral to the premises itself but was of the view that the premises variation would exacerbate these problems and increase traffic congestion and pollution in the area. He also cited problems arising from instances of joyriding and young drivers congregating in their vehicles in the Asda car park and felt that Asda needed to increase their security presence to tackle this issue. Overall, he held concerns regarding the detrimental impact that the premises variation could have on the area surrounding Pontygwindy Road.

All parties were afforded the opportunity to ask questions and in response to a Member's query on the reporting of these issues, Mr Serebro explained that he had contacted Environmental Health about noise emanating from the car wash. The situation had been monitored and the noise level had since reduced. Mr Serebro confirmed that he had not complained to the police about speeding traffic but was of the view that traffic calming measures needed to be urgently implemented in the area. He explained that he held concerns regarding the cumulative effect arising from a variation to the Asda licence.

The Chair emphasised that the Sub Committee could only consider the evidence placed before them and Mr Serebro acknowledged this but reiterated his view that Asda should address any security issues on their land, and explained that these were having a detrimental effect on himself and his neighbours.

A Member queried the details of opening times for other premises in the Pontygwindy Road area. The Licensing Manager confirmed that he did not have exact numbers to hand but that there may be a number of businesses in the area offering late night refreshment.

Representations were then invited from the applicant, Asda Stores Ltd.

Mr Richard Taylor (Gosschalks Solicitors) spoke on behalf of his client and summarised the reasons for the premises variation application. He explained that the premises was not seeking to open 24/7 but was merely seeking flexibility to offer alcohol sales and late night refreshments on occasions when it does open for longer hours. The Sub Committee were advised that there is no intention to increase late night operation of the in-store café, but rather that Asda were seeking flexibility to sell hot food and drinks available through their coffee machine, bakery and rotisserie outlets.

Mr Taylor explained that Asda Stores Ltd had made over a hundred premises variation applications leading up to the Christmas period, and were seeking maximum flexibility for their stores in view of their busiest trading day (23rd December) falling on a Sunday in 2018. As stores are restricted by Sunday trading hours, Asda were seeking to open longer around this period, either on Christmas Eve or in the run up to this date. The variation application was therefore intended to maximise the flexibility available to its customers.

Mr Taylor explained that there are no operational issues concerning Asda Caerphilly, and outlined the measures that are taken to uphold the licensing objectives, including CCTV, a full programme of staff training, and adherence to the Challenge 25 policy, including till prompts for age restricted products and independent test purchasing carried out by Asda. Mr Taylor stated that Asda had never faced a premises review and that this is an indication of the stringent measures in place to uphold the licensing objectives. He also confirmed that his client was amenable to the conditions proposed by the Responsible Authorities.

Mr Taylor then took the opportunity to address some issues raised in the representations from Other Persons, and highlighted that whilst many of these were irrelevant to the sale of alcohol, the representations provided the opportunity to address these issues with residents. He emphasised Asda's desire to be a good neighbour and offered to meet with Mr Serebro following the meeting to discuss the concerns and examine how Asda can deal with any issues within their remit. He referred to concerns over 24-hour opening and hope these had been allayed. With regards to car parking and traffic issues, he confirmed that Asda had removed all automated barriers from their sites but that if Asda were to receive a request from the police in respect of traffic management, this would be examined further. He explained that young drivers congregating in the car park was a historic problem but that staff carry out patrols in the area, and suggested that this would be a lesser problem if the store were to open longer, due to the increased staff presence.

Mr Taylor also referred to other issues outlined in the written representations, confirming that a loose manhole cover creating noise was in the process of being addressed, and stated that the exacerbation of anti-social behaviour through the supply of alcohol from the premises was not a view shared by the police. He explained that the issues surrounding litter and abandoned trolleys are nothing to do with the supply of alcohol, and that the trolleys have wheel magnets to minimise removal from the site. In closing, he hoped that his submissions had allayed some of the concerns from local residents and reiterated Asda's stance that they would not be opening 24 hours a day and 365 days of the year.

All parties were afforded the opportunity to ask questions and in response to a Member's query regarding trading flexibility, Mr Taylor explained that Asda were seeking to sell their full product range (including alcohol) at all times that the store is open to the public. In response to further questions on opening hours, he explained that although the store is not seeking to open 24/7, a successful variation would allow for this option if required. A Member asked whether Asda's security team would be tasked with tackling consumption of alcohol off the premises and in the car park and Mr Taylor referred to the premises plan as set out in the agenda papers. He stated that there is no evidence of drinking in the car park and that it is very difficult to control alcohol consumption outside of Asda's premises range.

In response to Member's queries, Mr Taylor provided further details of Asda's Challenge 25 policy, the training regime for till operators in regards to alcohol sales, the test purchasing process utilised by Asda, and the further training that is carried out in the event of non-compliance. He also outlined the types of licensing hours held by Asda stores across England and Wales, and described how Asda address any licensing concerns across their stores and the work that they carry out with local residents and other parties to resolve such matters. Mr Taylor added that he would take away the feedback from his client's application and work with Mr Serebro and local councillors to improve areas of concern.

A Member queried whether Licensing and Trading Standards carry out checks on licensed premises where there may be concerns in relation to the upholding of the licensing objectives. The Licensing Manager confirmed that each application is assessed on its own merits, and in cases where the licensing objectives may be under threat, the Council will interact with the business to reach a suitable outcome. The Licensing Manager also confirmed that he was not aware of any other businesses in the borough experiencing similar issues to those referenced by objectors to the Asda Caerphilly application, but emphasised that safeguards are in place to address any premises not meeting the requirements of the Licensing Act, and that if intervention fails to work, then a review of the premises is an option that can be pursued.

Mr Serebro sought clarification from Asda on areas of concern, including the measure of flexible trading, and queried if local residents would be notified via notices or leaflet drops about revised store opening times. Mr Taylor explained that Asda do not undertake leaflet drops but that Christmas opening hours are advertised in-store and online. Mr Serebro expressed concern regarding the vagueness of potential opening hours, although reassured

in respect of concerns around 365 day opening. Mr Taylor explained that extended opening hours would be in place around Christmas and Easter periods.

Mr Serebro also referred to the problems with littering and abandoned store trolleys in the area and was of the view that these are not being sufficiently addressed. The Chair raised a query on Asda's security arrangements and Mr Taylor outlined the assessment process to determine security requirements across its stores, and how security is delivered via a combination of a covert and visible security presence. He also reiterated that Asda have no control over littering, and explained that Asda have plenty of refuse bins around the site, and employ staff to collect loose trolleys around the site.

Mr Serebro confirmed that he was satisfied with this response and asked whether the car park would be fully lit during extended opening hours. Mr Taylor confirmed that this would be the case.

The Chair queried whether Asda were intending to open for extended hours during the Black Friday period in November. Mr Taylor explained that Asda do not participate in Black Friday but may seek to look at extended opening during the Easter period.

All parties were then afforded the opportunity to sum up before the Licensing and Gambling Sub Committee retired to make its decision.

The Licensing Manager referred the Sub Committee to the representations already made. The Responsible Authorities and Mr Serebro confirmed that they had nothing further to add.

Mr Taylor asked the Sub Committee to determine the application on the basis of firm evidence, and not potential concerns or issues arising from other premises. He referred to licensing policy and national guidance and to the lack of representations received from Gwent Police. He emphasised that the Responsible Authorities were satisfied with the agreed conditions and reiterated that there was no evidence to suggest Asda Caerphilly's sale of alcohol was causing any of the problems referenced in the representations. He urged the Sub Committee to have regard to the report recommendation to grant the variation and to put the matter to rest to allow Asda to hold discussions with Mr Serebro regarding his concerns.

The Legal Advisor informed all parties present that the Sub Committee would retire to consider the representations made at the meeting and they would be informed in writing of the decision in the next 5 days.

The Sub Committee retired at 10.53 a.m. to make its decision.

Following consideration of the application and having regard to the Licensing Officer's report and all the representations made, the Licensing and Gambling Sub Committee unanimously RESOLVED that the application for a variation of the premises licence in respect of Asda Stores Ltd, Pontygwindy Road, Caerphilly, be granted, subject to the three conditions set out in Paragraph 1.9 of the Licensing Manager's report and as follows:-

- 1) All staff who serve alcohol to be trained in the prevention of underage sales to a level commensurate with their duties. All such training to be updated as necessary, for instances when legislation changes, and should include training on how to deal with difficult customers. The training should be clearly documented and signed and dated by both the trainer and the member of staff receiving it. Following a test purchase failure or similar Licensing issue the documentation of the involved colleagues shall be available for inspection by an authorised officer of the Licensing Authority or a constable.
- 2) An approved proof of age scheme shall be adopted, implemented and advertised within the premise such as 'Challenge 25' whereby an accepted form of photographic identification shall be requested before any alcohol is sold to any person who appears

to be under 25 years of age. Acceptable proof of age shall include identification bearing the customers photograph, date of birth and integral holographic mark or security measure. Suitable means of identification would include PASS approved proof of age card, photo-card driving licence, military identification and passport.

- 3) Challenge 25 point of sale material shall be displayed at the premises, notifying customers of the operation of the Challenge 25 scheme.

In making their decision, the Sub Committee considered all four Licensing Objectives, the Licensing Act 2003, revised Home Office Guidance and Caerphilly Council's Licensing Policy.

The Sub Committee acknowledged the concerns of the residents but formed the view that based on the evidence and submissions, there was no demonstrable link between those concerns and the proposed sale of alcohol or late night refreshments from the premises. Given this, the Sub Committee were of the view that the four Licensing Objectives would not be undermined by the granting of the application.

The Sub Committee were satisfied that the applicant was complying with the requirements of their existing premises licence, and were reassured that based on the evidence and submissions before them, that the standard of compliance would continue to be applied to the varied licence. Whilst little weight was placed on it, the Sub Committee noted the applicant's willingness to work with local residents to work through the issues raised in the responses, despite these concerns being only marginally relevant to the application under the Licensing Act 2003. The Sub Committee also gave weight to the lack of objections from the responsible authorities in respect of the Licensing Objectives in regards to the application.

The decision notice advised any person aggrieved by the decision of their right to appeal to the local Magistrates Court within 21 days from the date of written notification of the decision.

The Chair declared the meeting closed at 11.30 a.m.