

BROMSGROVE DISTRICT COUNCIL

MEETING OF THE LICENSING SUB-COMMITTEE

MONDAY, 12TH JANUARY 2009, AT 10.25 A.M.

PRESENT: Councillors D. Hancox, Ms. J. A. Marshall and Mrs. C. J. Spencer

Observers: Councillor L. J. Turner

Officers: Mrs. D. Warren, Mrs. S. Smith and Ms. P. Ross

Also in attendance: Mr. R. Johnson, Gosschalks Solicitors – on behalf of ASDA, Mr. S. Williams, Deputy Store Manager, ASDA, Mr. J. Slafford, Mr. R. Ward and 3 other local residents.

16/08 **APPOINTMENT OF CHAIRMAN FOR THE MEETING**

RESOLVED that Councillor D. Hancox be appointed Chairman of the Sub-Committee for the meeting.

17/08 **APOLOGIES FOR ABSENCE**

No apologies for absence were received.

18/08 **DECLARATIONS OF INTEREST**

No declarations of interest were received.

19/08 **PROCEDURE**

The Chairman opened the Hearing and introduced the members of the Sub-Committee and officers present to the applicant and other parties present.

The Chairman invited the other parties to identify themselves, so that the applicant and/or the objectors were able to satisfy themselves that no person who may be in a position to influence the Sub-Committee remained in the room when the Sub-Committee considered their decision at the conclusion of the Hearing.

The Chairman reminded all parties of the procedure to be followed during the Hearing and that those parties present could be represented by a legal representative at their own expense, or by a Ward Councillor.

20/08 **APPLICATION TO VARY A PREMISES LICENCE IN RESPECT OF ASDA,
MARKET STREET, BROMSGROVE**

The Sub-Committee were asked to consider an application to vary a premises licence in respect of ASDA, Market Street, Bromsgrove. The application was subject to a Hearing in the light of representations which had been made by 13 residents living near to the premises. The basis of their representations related to problems associated with binge drinking, young people purchasing alcohol from the Store and consuming it in the vicinity of their residential properties, and noise nuisance from the potential increase in delivery schedules to the store. They felt the extension in hours would only exacerbate the problems highlighted and it was considered that the proposed variation would undermine the licensing objectives, prevention of public nuisance and crime and disorder. A representation had been received from the Council's Environmental Health (Pollution Control) Section on the grounds of public nuisance. However, the applicant had accommodated the concerns expressed by the Council's Environmental Health Section, and had agreed to include a condition on their licence to restrict deliveries to the store between 6:00am and 10:00pm. As a result of this the Council's Environmental Health Section had withdrawn their representation. No representations had been received from any other Responsible Authorities.

The Principal Licensing Officer introduced the report and in doing so, advised that a document detailing ASDA policy on the sale of alcohol had been received. In accordance with Regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005 the Interested Parties consented to the introduction by the Applicant of the document, a copy of which was circulated and a 15 minute adjournment agreed for all parties present to read the document. Mr. R. Johnson then put forward the case for the applicant. Mr. R. Ward and Mr. J. Slatford (on behalf of a number of residents) made representations on the grounds of Anti-Social Behaviour from youths purchasing alcohol from the store and noise nuisance from the potential increase in delivery schedules to the store.

Having listened to the representations made by the Interested Parties, Mr. R. Johnson advised that the Applicant had agreed to a condition on their Licence to restrict deliveries to the store between 6:00am and 10:00pm.

Having regard to:

- The licensing objectives set out in the Licensing Act 2003
- The Council's Statement of Licensing Policy
- The guidance issue under section 182 of the Act
- The application and representations made on behalf of the Applicant
- The relevant representations made by the Interested Parties

RESOLVED:

- (a) that the application for the retail sale of alcohol for consumption off the premises for 24 hours every Monday through to Sunday be granted with the inclusion of the condition that deliveries will only be made between 6:00am and 10:00pm;

- (b) that the provision of late night refreshment from 11:00pm – 5:00am every Monday through to Sunday be granted; and
- (c) that the conditions set out in Appendix A to the report are removed as per the application.

The reasons for the Sub-Committee's decision were as follows:

- The Sub-Committee has no power to restrict the opening hours of the store; it may only consider the licensable activity of the sale of alcohol for consumption off the premises; even if the Sub-Committee had decided to refuse this application the store would have been entitled to open 24 hours per day (with the restriction that it could not sell alcohol and subject to Sunday trading laws).
- The Sub-Committee notes the Council policy and the Department for Culture Media and Sport (DCMS) guidance that stores should be free to provide sales of alcohol at any times when the store is open for shopping unless there are good reasons based on the licensing objectives for restricting those hours. The Sub-Committee felt that there was insufficient evidence to restrict those hours in this instance.
- The Sub-Committee has listened to the residents' concerns about anti-social behaviour and have taken them seriously. However, the Sub-Committee has also noted the DCMS guidance which states:
"In the context of preventing public nuisance it is essential that conditions are focussed on measures within the direct control of the licence holder. Conditions relating to public nuisance caused by the anti social behaviour of customers once they are beyond the control of the licence holder or premises management cannot be justified and will not serve to promote the licensing objectives. Beyond the vicinity of the premises these are matter of personal responsibility of the individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right."
- The Sub-Committee has taken into account the fact that the premises sit within a Designated Public Places Order and that the police have powers under this Order to deal with individuals who breach the Order.
- In respect of the issues regarding deliveries, the Sub-Committee accepts the applicant's statement that the delivery schedules are unlikely to change as a result of the increased licensing hours and that this is unlikely to increase any disturbance to residents.

The Chairman reported that the applicant and Interested Parties would be notified of the decision in writing within 5 working days, and that an appeal against this decision may be made to the Magistrates' Court within 21 days from the date of the decision.

The Sub Committee reminded residents of the following:

1. Residents are entitled to ask for a licence to be reviewed at any time. If the changes permitted today result in public nuisance or crime and disorder you may request a review at which these issues will be considered in the light of evidence gathered by you. This can result in licensing hours being reduced.

2. Residents are advised to keep a written record of any problems encountered.
3. In relation to nuisance caused by deliveries, residents are advised to report these to the Council's Environmental Health Section.

The meeting closed at 12.55 p.m.

Chairman