

**MINUTES OF A MEETING OF THE  
LICENSING SUB-COMMITTEE  
Council Chamber - Town Hall  
22 June 2012 (10.30 am - 12.35 pm)**

**Present:**

**COUNCILLORS**

**Conservative Group** Peter Gardner (Chairman), Pam Light and  
Melvin Wallace (Vice-Chair)

Present at the hearing were: R Botkai, N Gray & S Nimalaharen (on behalf of the applicant),

Objectors: P Jones, Licensing Officer, Public Protection & Havering Police Licensing Officer PC D Fern.

Also present were Paul Campbell (Havering Licensing Officer), the Legal Advisor to the Sub-Committee and the clerk.

The Chairman advised those present of action to be taken in the event of emergency and the evacuation of the Town Hall becoming necessary.

There were no declarations of interest by Members.

**PREMISES**

Malthurst Faringdon  
Faringdon Avenue  
Harold Hill  
Romford  
RM3 0AB

**DETAILS OF APPLICATION**

Application for a premises licence under section 17 of the Licensing Act 2003 ("the Act").

**APPLICANT**

Malthurst Ltd  
Vincent House  
4 Grove Lane  
Epping  
CM16 4LH

**1. Details of the application**

<b>Supply of Alcohol (off Supply only)</b>		
<b>Day</b>	<b>Start</b>	<b>Finish</b>
Monday to Sunday	00:00hrs	24:00hrs

<b>Late Night Refreshment</b>		
<b>Day</b>	<b>Start</b>	<b>Finish</b>
Monday to Sunday	23:00hrs	05:00hrs

**Seasonal variations & Non-standard timings**

There are no seasonal variations or non-standard timings on this application.

**2. Promotion of the Licensing Objectives**

The applicant completed the operating schedule, which formed part of the application to promote the four licensing objectives.

The applicant had complied with premises licence regulations 25 and 26 relating to the advertising of the application. The required newspaper advertisement was installed in the Romford Recorder on Friday 4 May 2012.

**3. Details of Representations**

Valid representations may only address the four licensing objectives

- The prevention of crime and disorder;
- The prevention of public nuisance;
- The protection of children from harm; and
- Public Safety.

There were no representations from interested parties other than the Responsible Authorities identified below.

**Responsible Authorities**

Both the Police and the Licensing Authority questioned whether a premises licence for the sale of alcohol could be granted to these premises. Section 176 of the Licensing Act 2003 outlined the restrictions relating to this. A copy of Section 176 was attached to the report for Members' guidance.

Mr Paul Jones, Licensing Officer for the London Borough of Havering, had requested clarification from the applicant in relation to this matter and their reply was included with his representation.

The Police, Health and Safety and the Licensing Authority as responsible authorities registered their concerns to the application.

There were no representations from the following responsible authorities:

Public Health  
The London Fire and Emergency Planning Authority  
The Trading Standards Service  
Planning Control & Enforcement  
Children & Families Service

The Applicant's representative, Mr Botkai informed the Sub-Committee that his client had withdrawn his original request for supply of alcohol and asked for the following times to be considered instead:

<b>Supply of Alcohol (off Supply only)</b>		
<b>Day</b>	<b>Start</b>	<b>Finish</b>
Monday to Sunday	06:00hrs	23:00hrs

He also stated that his client had withdrawn his request for Late Night Refreshment and had accepted the conditions as set out by the Police.

The Chairman confirmed that the application would be considered on the basis of these amendments.

**Public Protection:**

The Public Protection Officer Mr Jones questioned the legitimacy of the application itself in that it failed to meet the restriction imposed by Section 176(2)(b) of the Licensing Act 2003.

He stated that the premises was an "excluded premises" as defined under S.176(2) and that under S.176(1) an excluded premises could not be granted a premises licence. In support of this, Mr Jones produced evidence that the nature of business of Malthurst Ltd., as recorded in Companies House, was "retail sale of automotive fuel in specialised stores". It was his contention that the absence of any reference to any other retail activity suggested that S.176(2)(b) applied.

He informed the Sub-Committee that paragraph 5.22 of the April 2012 S.182 amended guidance to the Act indicated that premises were primarily used as a garage if they were primarily used ... for the retailing of petrol. In addition, paragraph 5.23 stated that the licensing authority **had to** decide whether or not the premises was being used primarily as a garage. He concluded by referring to paragraph 5.24 which stated that where there was insufficient evidence to establish primary use, it was for the licensing authority to decide whether to grant the licence and then deal with any issues arising from that decision through enforcement action.

Mr Jones then questioned whether the Applicant had sufficiently addressed the licensing objectives citing the apparent over-reliance on CCTV in respect of managing the prevention of crime and disorder, a reluctance to explain how it was proposed to provide for public safety and had only made a general statement that "adequate staffing levels" would be maintained at the premises.

Although the argument concerning public nuisance had been focused on the original application for twenty-four hour sales of alcohol, even in its more restricted format, there remained concerns as to whether sufficient concern

about disturbance of neighbours by disposing of bottles etc at unsociable times or even whether there had been provision for sufficient receptacles for waste had been addressed. Mr Jones added that the Applicant had merely acknowledged that Challenge 25 would be implemented, there was nothing in the application to ensure that under-age visitors to the premises were being informed and warned about the consequences and penalties for attempting to purchase alcohol.

Mr Jones concluded by saying that apart from the Applicant's failure to demonstrate that the premises was not one which was excluded under S.176 of the Act, there were serious short-comings in the application as a whole which gave him cause for concern that the Applicant had not adequately demonstrated that the licensing objectives had been addressed.

**Health & Safety:** The H&S Officer was not present

**Metropolitan Police:**

PC Fern acknowledged that the application was no longer being considered as originally requested. He stated that whilst this was a positive step, the Police still had genuine concerns about whether the location of the premises made it appropriate for selling alcohol.

He informed the Sub-Committee that the premises was located between three wards, those of Heaton, Gooshays and Harold Wood and that the Briar Road estate was close by. The area immediately adjacent to the premises was not a particularly affluent one and the Police had identified high incidences of drug and alcohol abuse (including under-age drinking) as well as anti-social behaviour and criminal damage caused by groups of young people congregating around shops and businesses nearby. Recent development had included the building of homes for the elderly and this meant an additional burden for the police. An additional outlet for alcohol was likely to place an even greater burden on police resources.

PC Fern concluded by stating that if the Sub-Committee was minded to grant a licence, the conditions identified as being appropriate to the application ought to be attached to the licence.

**4. Applicant's response.**

Mr. Botkai responded to the objections raised by informing the Sub-Committee that Malthurst was a large organisation which operated numerous establishments along the lines of the one proposed in Faringdon Avenue. He was very conversant with S.176 and its implications and explained that the company had identified a genuine business opportunity in the area and was in the process of having the old premises demolished and intended to construct a new, purpose-built retail premises with three times the floor-space of the previous outlet.

He explained that the company was aware of the volume of fuel sales as compared with the amount of "shop" products and it was confident that – within the definition of S.176 – the balance would be very much towards shop sales as

opposed to garage sales (and he had produced figures to demonstrate what had been the balance on the old business model. Mr Botkai stated that despite the entry in Companies House, the description was solely for the Memorandum and Articles and did not restrict the company from broader trading abilities. He explained that Malthurst Ltd. was not a company which was inexperienced in this sort of venture and all of its establishments were carefully planned, constructed, staffed and managed. If the balance was not strongly in favour of shop sales, the company had made a serious commercial error of judgement.

Mr Botkai addressed the various issues raised by the Police and Public Protection services by drawing attention to the fact that the company had withdrawn its request for a twenty-four hour licence as well as its request for late night refreshment as indicative of the company's wish to work constructively with the local authority. He added that the company had produced a voluntary set of conditions it felt was appropriate to be added to the licence as further evidence of its good intentions. He argued that he understood the concerns of the Police about crime and disorder in the area but said that the company was providing a high quality modern shopping venue for local residents and that this would provide a positive sign of inward investment in an area which, by the Police's own admission, greatly needed it.

The issues raised would be addressed by ensuring that the premises was well run, staff well trained and the proper signs and restrictions in place in and around the premises. CCTV would be installed in accordance with Police requirements and information would be provided to the appropriate authorities on demand. He was confident that the premises would make a positive contribution to the area.

## **5. Determination of Application**

### **Decision**

**Following the hearing held on 22 June 2012, the Sub-Committee's decision regarding the application for a Premises Licence for Malthurst Faringdon, Faringdon Avenue, Harold Hill, Romford RM3 0AB is as set out below, for the reasons shown:**

The Sub-Committee was obliged to determine this application with a view to promoting the licensing objectives, which were:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

In making its decision, the Sub-Committee also had regard to the Guidance issued under Section 182 of the Licensing Act 2003 and Havering's Licensing Policy.

In addition, the Sub-Committee took account of its obligations under s17 of the Crime and Disorder Act 1998 and Articles 1 and 8 of the First Protocol of the Human Rights Act 1998.

**Facts /**  
**Issues**

Whether the granting of the premises licence would undermine the four licensing objectives.

- **The prevention of public nuisance**
- **Public safety**
- **The protection of children from harm**
- **The prevention of crime and disorder**

The Police had submitted that granting a premises licence to the Applicant would lead to increases in drink related anti-social and criminal activity as this would be placing an outlet for alcohol in an area which was already struggling with these problems.

The Public Protection position was that the Applicant had not shown that S.176 did not apply and that due to a lack of detail in the application, the Sub-Committee couldn't be certain that the premises was not an excluded premises as defined by the Act and, if this was the case, the Sub-Committee ought not to grant the licence. They too were concerned that the new premises would not be staffed or managed in a manner conducive to the needs of the local community and the application was therefore inappropriate.

The Sub-Committee accepted that the original application was one which it had been concerned about, but it had heard both sides of the argument relating to whether S.176 of the Act was applicable and if so, how far the Applicant had gone in addressing that. The Sub-Committee noted that this application had two elements:

- Was it a garage and
- Was it persuaded that it would not contravene the four licensing objectives.

The Sub Committee determined to **grant** the application for the following reasons:

It accepted that the Applicant had shown that the primary usage of the premises (as defined in s 176 of the Licensing Act 2003) was not the provision of fuel, but that this would be ancillary to the sale of provisions and alcohol. The Sub-Committee had accepted the limitation the Applicant had placed on the hours in which he proposed to sell alcohol:

<b>Supply of Alcohol (off Supply only)</b>		
<b>Day</b>	<b>Start</b>	<b>Finish</b>
Monday to Sunday	06:00hrs	23:00hrs

The Sub-Committee also accepted that the Applicant had showed that sufficient resources were being made available to ensure that the four licensing objectives were fully addressed and that the objections to the licence (aside from those concerning primary usage) mostly related to the original 24 hour licence applied for. The Sub-Committee therefore considered that in its revised form and with the addition of the following conditions the application was acceptable:

- The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of a Metropolitan Police Crime Prevention Officer. All entry and exit points shall be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of **31 days** with date and time stamping. Recordings shall be made available **immediately** upon request of Police or authorised council officer throughout the preceding 31 day period.
- A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open to the public. The staff member must be able to show a Police or an authorised Council officer recent data or footage with the absolute minimum of delay when requested.
- **CD1** All staff shall be suitably trained for their job function for the premises. The training shall be written into a programme, ongoing and under constant review. Refresher training shall be at a minimum of six monthly intervals. These records must be available to a relevant Responsible Authority when called upon.
- No more than **15%** of the sales area shall be used at any one time for the sale, exposure for sale, or display of alcohol.
- Alcohol shall not be displayed within three (3) metres of the entrance.
- No sales of beer, lager or cider in single cans or in bottles less than 500ml in size to be sold (minimum of packs of four).
- A proof of age scheme, such as Challenge 21 / 25, shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence or passport.
- A log shall be kept detailing all refused sales of alcohol. The log shall not be in a loose-leaf format and should include the date and time of the refusal and the name of the member of staff who refused the sale. The log shall be available for inspection at the premises by the Police or an Authorised officer of the Council at all times whilst the premises is open.
- **CDGPG4** Prominent clear notices shall be displayed at the point of entry to the premises and in a suitable location at any points of sale, advising customers that they may be asked to produce evidence of their age.

- **CDGPG13** Prominent, clear notices shall be displayed at the premises about the supply of alcohol to minors and the relevant offences involved.
- The licence holder will monitor the primary use of the premises and if the data demonstrates that the premises are excluded premises pursuant to S. 176 of the Licensing Act 2003, the sale of alcohol will cease until such time as the data demonstrates that the premises is not so excluded. Such data will be available on request to the Police and the Licensing Authority.

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**Chairman**