

**MINUTES OF A MEETING OF THE
LICENSING SUB-COMMITTEE
Council Chamber - Town Hall
11 April 2016 (2.00 - 4.20 pm)**

Present:

COUNCILLORS

Councillors Linda Van den Hende (Chairman), Jody Ganly and Frederick Thompson.

Present at meeting were R Botkai, L Harvey, N Law, A Gupta and R Herries (Representing the applicant), Councillor Patricia Rumble (Objector), P C Daly and PC Goodwin, Metropolitan Police and Paul Jones, Licensing Authority and Casey Conway, Licensing Officer.

Also present were the Council's Legal Adviser and the Clerk to the Sub-Committee.

All decisions were taken with no votes against.

The Chairman reminded Members of the action to be taken in an emergency.

1 APPLICATION TO VARY A PREMISES LICENCE - HAROLD PARK SERVICE STATION, COLCHESTER ROAD, ROMFORD, RM3 0AG

PREMISES

MRH Harold Park
Harold Park Service Station
Colchester Road
Romford
RM3 0AG

APPLICANT

Malthurst Petroleum Limited
Vincent House
4 Grove Lane
Epping
CM16 4LH

1. Details of Application

Variation applied for:

Supply of Alcohol		
Day	Start	Finish
Monday - Sunday	00:00	24:00

The premises were already open for 24 hours a day and the application was seeking to bring the alcohol sales in line with their current operation times. Additionally the application was seeking a minor alteration to the internal layout, although a notation on the plan indicated that the entire premises might be used for the sale of alcohol and the provision of late night refreshment.

The applicant had acted in accordance with regulations 25 and 26 of *The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005* relating to the advertising of the application. The required public notice had been installed in the Romford Recorder on the 4 March 2016.

The premises were situated within an area which had been designated a Cumulative Impact Zone in Havering's Statement of Licensing Policy 3 which had come into force on the 7 January 2016.

'Licensing Policy 3

The Licensing Authority has adopted a special policy relating to cumulative impact in relation to Harold Hill.

This policy creates a rebuttable presumption that applications for new premises licences, club premises certificates, or variation applications specifically for off sales only that are likely to add to the existing cumulative impact will be refused, unless the applicant can demonstrate why the operation of the premises involved will not add to the cumulative impact and not impact adversely on the promotion of the licensing objectives.'

During the consultation period the applicant had submitted the following conditions as an addition to the operating schedule:

1. *All staff engaged or to be engaged in the sale of alcohol on the premises shall receive the following training in age restricted sales:*
 - *Induction training which must be completed and documented prior to the sale of alcohol by the staff member.*
 - *Refresher/reinforcement training at intervals of no more than 6 months.*

Training records will be available for inspection by a police officer or other authorised officer on request.

2. *All cashiers shall be trained to record refusals of sales of alcohol in a refusals book/register. The book/register will contain:*
 - *details of the time and date the refusal was made;*
 - *the identity of the staff member refusing the sale;*
 - *details of the alcohol the person attempted to purchase.*

This book/register will be available for inspection by a police officer or other authorised officer on request.

3. *An incident book/register shall be maintained to record:*
 - *All incidents of crime and disorder occurring at the premises*
 - *Details of occasions when the police are called to the premises*

This book/register will be available for inspection by a police officer or other authorised officer on request.
4. *There shall be no self-service of spirits except for spirit mixtures.*
5. *There shall be no sale of single cans of beer, lager or cider from the premises.*
6. *There will be no sale of beer, lager or cider with an ABV over 5.5%.*

2. Details of Representations

There were two (2) representations against this application from interested persons.

There were two (2) representations against this application from responsible authorities.

Details of representations

Valid representations may only address the following licensing objectives:

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

The representation submitted by Councillor Patricia Rumble had addressed two of the licensing objectives, the prevention of crime and disorder and the prevention of public nuisance. She had attended the hearing and reiterated her representation that the residents living in Woodstock Avenue back on to the forecourt of the garage and were already complaining about the late night disturbance from those visiting the shop, and that their sleep had been frequently interrupted. They were fearful that their lives would be further disrupted if this garage was granted a licence to sell alcohol on a twenty four hour basis. She was also concerned that this would increase alcohol fuelled crime in the area.

Mr & Mrs House had submitted a representation covering the crime and disorder and prevention of public nuisance objectives. Their representation, inter alia, referred to one particular incident involving two vehicles.

3. Responsible Authorities representations.

Paul Jones on behalf of the Licensing Authority had submitted a representation as the application was in opposition to a number of Havering's licensing policies and as such had the potential to negatively

impact upon the promotion of the licensing objectives, in particular the prevention of public nuisance.

Licensing Policy 1

- The premises were located in one of Havering's special policy areas in relation to cumulative impact;
- The premises were located in an area which was almost entirely residential; and
- The hours of intended operation were outside those guideline hours Havering had identified as favourable.

Based on these considerations the Licensing Authority had reasonable grounds on which to base opposition to this application.

Licensing Policy 3

Havering's 2016 licensing policy had created a new cumulative impact zone (CIZ) via the creation of Licensing Policy 3 in which this premises was located. Although the premises was located on the very edge of the CIZ it was still within the ambit of the CIZ and hence the policy. As such the policy's requirement upon an applicant was to '*demonstrate why the operation of the premises involved would not add to the cumulative impact and not impact adversely on the promotion of the licensing objectives.*' To this end the applicant had provided the following statement:

'The applicant has considered the Statement of Licensing Policy and is satisfied that the grant of the variation application, with the conditions offered, is unlikely to add to the cumulative impact referenced in the Policy.'

There appeared to be little apparent evidence within this brief statement to demonstrate why the applicant was of the view that the application was unlikely to impact adversely upon cumulative impact in the area. One might be of the opinion that while the applicant appeared to be satisfied that the grant of this application was unlikely to add to cumulative impact it might seem more pertinent that the Licensing Authority was able to hold a similar view. This statement provided little persuasive reassurance in this regard.

The Guidance to the Act had also indicated the expectations placed upon applicants further to premises licence applications and the steps required to promote the licensing objectives in paragraphs 8.33 to 8.41. Paragraph 8.39 seemed particularly explicit in this regard:

'Applicants are expected to provide licensing authorities with sufficient information in this section to determine the extent to which their proposed steps are appropriate to promote the licensing objectives in the local area. Applications must not be based on providing a set of standard conditions to promote the licensing objectives and applicants are expected to make it clear why the steps they are proposing are appropriate for the premises.'

Havering's Licensing Policy 3 was in accordance with the aims of this paragraph.

Licensing Policy 5

Clearly the aims of this policy related to those of Licensing Policy 3. While this premises was already permitted to sell alcohol and thus would not constitute an addition to the number of licensed premises in the area, the hours sought appeared to be outside the policy's guideline terminal hour of 23:00.

Licensing Policy 7

This policy addressed terminal hours and indicated that *more favourable consideration* would be given to applications which sought to retain terminal hours as indicated. This application effectively sought to do away with terminal hours as the application was for alcohol supplies to be permitted 24 hours a day. One might reasonably expect, therefore, that some form of justification would be provided to rationalise this.

The applicant's *Statement* appeared to suggest that the conditions offered were sufficient mitigation to support the application for 24 hour alcohol sales. Such a position appeared to place the onus upon the responsible authorities to construct an argument to support the grant of the application based upon the proposed conditions. Licensing Policy 3, however, made it clear that it was incumbent upon the applicant to '*demonstrate why the operation of the premises involved will not add to the cumulative impact and not impact adversely on the promotion of the licensing objectives.*' Does the applicant's *Statement* and proposed conditions succeed to this end.

Licensing Policy 14

This policy was designed to protect *the amenity of residents and businesses in the vicinity of licenced premises, particularly when late hours had been sought.* Clearly, late alcohol supply hours had been sought at this location. The applicant had proposed a series of measures broadly aimed at preventing crime and disorder and protecting children from harm; however, what measures might be proposed which related *directly* to the amenity of the residential properties which abut this premises? i.e the prevention of public nuisance.

A reasonable person might adopt a *live-and-let-live* approach to any activity if it had the potential to impose little or no adverse impact upon his or her amenity. To this end the Licensing Authority might reasonably expect this application to provide measures to mitigate the potential for public nuisance further to 24 hour alcohol supply and, in particular, those late night/early morning hours sought in addition to those already permissible. The application proposed the following:

'Adequate waste receptacles for use by customers shall be provided in and immediately outside the premises.'

Based upon this the Sub-Committee might conclude that any risk assessment which may have been conducted by the applicant further to public nuisance considerations foresaw only the potential for litter problems attendant to 24

hour alcohol supplies. While one may argue that the conditions proposed *in totality* might further the promotion of all four licensing objectives one might have expected a more robust approach specifically aimed at the prevention of public nuisance, given the location of this premises in a CIZ. The Guidance to the Act indicates at paragraph 2.14 that public nuisance issues extended beyond litter concerns as they *'will mainly concern noise nuisance, light pollution, noxious smells and litter.'*

While the Guidance to the Act indicated at paragraph 1.17 that it was *'essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there was no need for such conditions'* one might reasonably have expected greater consideration to have been given to the promotion of this particular licensing objective. The onus was upon the applicant to *'demonstrate why the operation of the premises involved would not add to the cumulative impact and not impact adversely on the promotion of the licensing objectives.'*

The applicant had to be explicit when submitting an application which appeared contrary to the Licensing Authority's stated policies; it was not for responsible authorities to infer meaning where meaning might appear less than explicit.

In conclusion the Licensing Authority had maintained that based upon the merits of this application – an application which appeared to come into conflict with a number of Havering's licensing policies, in particular Licensing Policy 3 – this Licensing Authority was unable to support the application as submitted and subsequently modified on 1st March 2016. They were of the view that the applicant had failed to demonstrate why the operation of the premises involved would *not* add to the cumulative impact and *not* impact adversely on the promotion of the licensing objectives. The Licensing Authority had suggested that the application had not met an appropriate threshold to enable this Licensing Authority to depart from the stated aims of Licensing Policy 3. and respectfully requested that the Licensing Sub-Committee declined to grant the application.

PC Daly, on behalf of the Metropolitan Police had also submitted a representation on the grounds the application would be detrimental to the following licensing objectives:

- The prevention of crime and disorder
- Public Safety.

PC Daly had indicated that the applicant had sought the removal of the conditions listed in Annex 2 of the licence, which the Police Authority considered to be both proportionate and relevant to the licensing objectives.

The venue was located within a Cumulative Impact Zone, it was within walking distance from a high concentration of residential areas which suffered from high levels of crime and disorder.

The Office for National Statistics detailed that violent incidents which involved alcohol increased from 23% between 1200 - 1800 to 54% between 1800 – 2200 up to an average of 83.5% between 2200 – 0600.

Creating a single outlet for the off-sale of alcohol after 11pm in the cumulative impact zone would inevitably create a focal point, this would be most concerning at the weekends especially after the various public houses in the area close.

The request to remove the conditions in annex 2 relating to staff training presented a concern in respect of the ability of staff members to be able to identify customers who were likely to cause disorder in the immediate vicinity.

The details provided by the applicant regarding staffing levels were non-specific. The applicant had stated that staffing levels would be adequate and would be disclosed on request to the relevant authorities. The Police had concern that public safety could be compromised by the operators reducing staffing levels to cut costs. There had been no mention of any alternative options such as hatch service after the current terminal hour.

4. Applicant's response.

Mr Botkai, acting on behalf of the applicants responded to the representations.

He first referred to the minor alterations to the layout. He had asked if there were any objections to these alterations which would see no changes to the location of the spirits which would remain behind the counter but see other alcohol move down by one unit. He had indicated that he could give an assurance that the premises would not turn in to an off licence.

In response to a question from the Sub-Committee he had indicated that currently considerably less than 15% of the shelf space was used for the sale of alcohol. If the Sub-Committee were minded to grant the variation his clients would be happy to accept a condition limiting the space allocated for the sale of alcohol to no more than 15%.

The premises were currently licensed to sell alcohol between 0600 hours and 2300 hours. When the application had been submitted the applicants had been advised that the premises did not fall within a CIZ. They had been contacted by the Licensing Authority who advised that the premises were within the Harold Wood CIZ.

In response the applicants, having considered the Statement of Licensing Policy were satisfied that the grant of the variation application, with the conditions offered was unlikely to add to the cumulative impact referenced in the policy. On the 1st March they had submitted a list of six conditions.

During the meeting Mr Botkai circulated an amended list of conditions for consideration; these were in addition to those in the operating schedule.

Mr Botkai then referred to the failure of the police to provide any evidence, referencing Section 102 of the guidance which stated that responsible

authorities need to refer to evidence to back up the Statement of Licencing Policy.

Mr Botkai then referred to the actual Statement of Licencing Policy a copy of which had been downloaded from the Council website. We had directed the Sub-Committee's attention to page 63 which was entitled Appendix 8 Evidence for Harold Hill Map area 1. He then referred to page 64, Map area 2 which he claimed where not very helpful.

On page 65 the problem was highlighted, i.e. street drinkers in the Hilldene area and increased anti-social behaviour and shop lifting. A survey carried out by the safer neighbourhood team of local residents and business had highlighted these issues as being of major concern together with public urination and intimidating behaviour.

Mr Botkai stated that the premises were a good 30 minutes walk from the premises and therefore in his view it was borderline that these policies should apply to the service station.

The references to the Super Output Areas were confusing. Mr Botkai had written to Licensing seeking further information but this had not been forthcoming. What he had been requesting was the evidence used by the Council when it adopted the Statement.

From what he had found there was no evidence specific to Harold Hill.

He had looked at the London Ambulance data where he stated the data related to Havering and assumptions had been made regarding the incidents in Harold Hill. He had undertaken his own research and pointed out what he saw as a serious error in the London Ambulance data.

The question for his clients had been how did the issue of binge drinking in Hilldene impact on their application. Would the granting of a 24 hour alcohol licence have any impact, in his opinion this was most unlikely. Similarly the variation would have no effect on theft in the area.

The applicants had carried out research on the local area and found that off licences in the area were selling 3 litre bottles of high strength cider. Some outlets were selling three different sizes of the same product. Single cans and bottles were also readily available. The question was why were the Local Authority not taking action to address these issues which were highlighted in the Statement.

Mr Botkai then went on to address the specific issues raised in the representations.

1. Licencing Authority

Their representation was all about policy and he had addressed all the issues with this tailored application.

2. Metropolitan Police

This representation only made specific mention of CCTV and this had been addressed with the new conditions offered by his client. The Police had offered no evidence to support their representation and all the matters raised had been addressed by the conditions offered by his clients.

3. Representation from Councillor Rumble.

No evidence had been produced to support the representation and the police had provided no evidence.

4. Representation from Mr and Mrs House.

Mr Botkai acknowledged that police had been called to the service station on two occasions, but neither incident related to the premises activities. In the first incident a car pulled up on the forecourt. It was followed by a second vehicle. A person got out of the second vehicle with a hammer and started smashing the first vehicle.

The second incident involved staff calling the police because they had concern that a woman passenger in a vehicle might have been kidnapped.

Neither of these incidents related to the activities of the premises.

Mr Botkai accepted that the premises were within the CIZ but all the evidence in the Statement related to Hilldene which was 30/35 minutes walk from the service station.

Mr Botkai offered the possibility of a temporary licence running for 8 to 9 months giving the responsible authorities an opportunity to monitor.

In response to questions from the Sub-Committee Mr Botkai advised that the 14 days for the retention of CCTV images was the MHR standard. Given the increase in quality of new recording systems it was difficult to retain 31 days but his clients were prepared to accept that condition.

The Sub-Committee sought clarification as to what conditions were now being offered by his clients and whether or not the Police and Licensing Authority were prepared to accept these should the Sub-Committee decide to grant the variation.

A recess was called to allow the parties to agree a set of conditions which would be acceptable to all should the Sub-Committee decide to grant the variation.

5. Determination of Application

Consequent upon the hearing held on 11 April 2016, the Sub-Committee's decision regarding the application for a variation of the premises licence for MHR Harold Park was as set out below, for the reasons stated:

The Sub-Committee was obliged to determine the application with a view to promoting the licensing objectives.

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 section 117 of the Crime and Disorder Act 1998, and Articles 1 and 8 of the First Protocol of the Human Rights Act 1998.

6. Decision

Having listened carefully to all the representations we are concerned that we have been presented with late information on conditions which we found unacceptable, however we were pleased an accommodation had been reached on an agreed set of conditions by all sides.

Whilst this premises is in a Cumulative Impact Zone, our policy indicates that each application must be considered on its own merits. Following the representations by the applicant's representative we consider it justifiable to depart from the Special Policy and we are therefore prepared to grant the variation to the licence as we considered it unlikely to add to the cumulative impact in the area.

In terms of the proposed minimal change to the layout, we were content that this did not make a material change to the shelf space used for the sale of alcohol, however, we have imposed a condition that a maximum of 15% of shelf space be given over to alcohol.

We have also imposed the following conditions which were agreed between the parties to replace those currently listed in annex 2 of the current operating schedule.

1. A CCTV system will be installed, or the existing system maintained, such system to be fit for purpose;
2. The CCTV system shall be capable of producing immediate copies on site. Copies of recordings will either be recorded on good quality video tape or digitally on to CD/DVD or other equivalent medium;

3. Any recording will be retained and stored in a suitable and secure manner for a minimum of 31 days and shall be made available, subject to compliance with Data Protection legislation, to the police for inspection within 24 hours;
4. The precise positions of the cameras may be agreed, subject to compliance with Data Protection legislation, with the police from time to time;
5. The system will display, on any recording, the correct time and date of the recording;
6. The CCTV system will be maintained and fully operational throughout the hours the premises are open for any licensable activity;
7. Adequate waste receptacles for use by customers shall be provided in and immediately outside the premises;
8. The premises licence holder will ensure that an age verification policy will apply to the premises whereby all cashiers will be trained to ask any customer attempting to purchase alcohol, who appears to be under the age of 25 years (or older if the licence holder so elects) to produce, before being sold alcohol, identification being a passport or photocard driving licence bearing an holographic mark or other form of identification that complies with any mandatory condition that may apply to this licence;
9. All staff engaged or to be engaged in the sale of alcohol on the premises shall receive the following training in recognising the signs of intoxication:
 - Induction training which must be completed and documented prior to the sale of alcohol by the staff member;
 - Refresher/reinforcement training at intervals of no more than 6 months;

Training records will be available for inspection by a police officer or other authorised officer on request.

10. All cashiers shall be trained to record refusals of sales of alcohol in a refusals book/register. The book/register will contain:
 - a. Details of the time and date the refusal was made;
 - b. The identity of the staff member refusing the sale.
 - c. Details of the alcohol the person attempted to purchase.

This book/register will be available for inspection by a police officer or other authorised officer on request.

11. An incident book/register shall be maintained to record:
 - a. All incidents of crime and disorder occurring at the premises
 - b. Details of occasions when the police are called to the premises.

This book/register will be available for inspection by a police officer or other authorised officer on request;

12. There shall be no self-service of spirits except for spirit mixtures;
13. A notice will be displayed informing customers that it is an offence to buy alcohol for persons under the age of 18;
14. There shall be no sale of single cans of beer, lager or cider from the premises;
15. There will be no sales/supplies of beers, ales, lagers or ciders with an ABV over 5.5%;
16. The entrance door to the shop will be closed to customers between 2300 and 0500 and any sales between these hours will be made through the night pay window;
17. There shall be no sales of spirits in vessels smaller than 35cl;
18. There shall be no sales of beers, ales, lagers or ciders in vessels larger than 2 litres.

Chairman