

## **LICENSING SUB-COMMITTEE**

**Wednesday 11th January, 2016 at 10.30 a.m.**

**In a Conference Room at the Council House, Walsall**

### **Present:**

Councillor Rochelle (Chairman)  
Councillor Sarohi  
Councillor Sears

### **In attendance:**

|                    |   |
|--------------------|---|
| Hazel Powell       | Senior Licensing Officer – Walsall MBC            |
| Dominic Patouchas  | Legal Services – Walsall MBC                      |
| Dr. Paulette Myers | Consultant in Public Health Medicine- Walsall MBC |
| Patrick Duffy      | Public Health- Walsall MBC                        |
| Richard Taylor     | Gosschalks Solicitors, representing Morrisons     |
| Kelly Nicholls     | Morrisons Licensing Manager                       |
| PC Neil Gardiner   | West Midlands Police                              |
| Sgt Leigh Hale     | West Midlands Police                              |

### **Appointment of Chairman**

#### **Resolved**

That Councillor Rochelle be appointed Chairman of the Licensing Sub-Committee for this meeting only.

### **Councillor Rochelle in the chair**

#### **Welcome**

The Chairman extended a welcome to all persons present at the Licensing Sub-Committee which had been established under the Licensing Act, 2003.

#### **Apologies**

An apology for non-attendance was submitted on behalf of Councillor Clarke.

#### **Declarations of Interest**

There were no declarations of interest.

**1297/16**

#### **Licence Hearing**

**Application for a premises licence under Section 17 of the Licensing Act, 2003- Morrisons Daily Petrol Filling Station, Middle Piece Way, Willenhall, WV13 1QG**

The report of the Director of Public Health was submitted:-

(See annexed)

Councillor Rochelle explained the purpose of the meeting and requested the Senior Licensing Officer (Miss Powell) to explain the application.

The Senior Licensing Officer (Miss Powell) enlarged upon the report for the benefit of the Sub-Committee and indicated that the application for a premises licence in respect of Morrisons Daily Petrol Filling Station, Middle Piece Way, Willenhall, WV13 1QG had been made under Section 17 of the Licensing Act, 2003. The application had been made by W.M. Morrison Supermarkets PLC and submitted on their behalf by Gosschalks Solicitors. The application had been received by the Licensing Authority on 15<sup>th</sup> November, 2016 (appendix 1 refers) and could be granted as requested, granted with additional/ modified conditions or rejected. Miss Powell drew the Sub-Committee's attention to paragraph 3.2 of the report which summarised the proposed activities and times including the supply of alcohol off the premises from 00.00a.m. to 24.00p.m. Monday to Sunday and the provision of late night refreshment from 23.00 hours to 0500 hours Monday to Sunday also. The premises opening times were 00.00 hours to 24.00 hours Monday to Sunday.

A street map showing the location of the premises was given as appendix 2 to the report and Miss Powell confirmed that the application had been submitted to the statutory "responsible authorities" and had been advertised by way of a blue site notice displayed at the premises and a licensing notice had been placed in a newspaper circulating in the area to comply with the requirements of the Licensing Act. On 9<sup>th</sup> December, 2016 a written representation had been received from West Midlands Police (appendix 3 refers) and on the 13<sup>th</sup> December, 2016 written representations were received from Walsall Council's Public Health Department (appendix 4 refers). No other representations were received from responsible authorities or other persons. She then drew attention to paragraph 4.0 of the report relating to Section 176 of the Licensing Act, 2003 which stated in part that:-

- (1) No premises licence has effect to authorise a sale by retail or supply of alcohol on or from excluding premises. Excluded premises means premises used primarily as a garage or which form part of premises which are primarily so used.
- (2) Premises are used as a garage if they are used for one or more of the following:-
  - i. The retailing of petrol
  - ii. The retailing of derv

- iii. The sale of motor vehicles
- iv. The maintenance of motor vehicles

Finally, Miss Powell drew the Sub-Committee's attention to paragraph 5.2 of the report which contained the legal position.

The parties had no questions for Miss Powell on the report.

P.C. Gardiner circulated a number of photographs of the site for the Sub-Committee's information:-

(see annexed)

He informed the meeting that this was a sleepy corner of Willenhall with little crime. West Midlands Police had tried to mediate reduced hours for the sale of alcohol with Morrisons but had been unsuccessful. The petrol station was some distance from the retail store. Referring to Section 176 of the Licensing Act, 2003, P.C. Gardiner reiterated the fact that alcohol sales were forbidden from a garage. He felt that people would go to the site to purchase petrol primarily and pick up groceries or wine and beer as an afterthought. He also referred to the limited number of parking spaces at the site which would encourage people to park at the pumps and then shop before paying for their fuel which could lead to queuing onto adjacent roads. He asked whether the Licensing Act, 2003 or the European Directive carried the most weight when considering an application of this type.

P.C. Gardiner reminded the meeting that the petrol station was close to a nearby cemetery with a number of benches for visitors. He could foresee people purchasing alcohol at the kiosk then drinking it in the cemetery, creating a possible flashpoint with mourners/ visitors to the site.

P.C. Gardiner referred to the plan of the proposed mini supermarket which would double the size of the existing kiosk and add lottery ticket sales, and other retail provision, increasing the use of the site.

Mr Taylor (Gosschalks Solicitors, representing Morrisons) asked for clarification that P.C. Gardiner was objecting to the application on two points- Section 176 of the Licensing Act, 2003 and the area not being appropriate for a 24 hour premises licence. He asked P.C. Gardiner to confirm that the area was relatively crime free. P.C. Gardiner agreed that this was correct. P.C. Gardiner replied that he would prefer reduced hours from a 24 hour operation as that would reduce the risk of the need for additional police presence in the area at a time of limited resources.

Mr Taylor drew the Sub-Committee's attention to additional parking spaces which would be provided as part of the extension to the kiosk. He asked if P.C. Gardiner was aware of these additional parking spaces. P.C. Gardiner replied that he was not. Finally, Mr Taylor

referred to paragraph 4.4 of the report which suggested that Section 176 of the Licensing Act, 2003 would not apply to this site as it was not a garage based on projected sales (appendix 5 refers).

Councillor Rochelle asked if someone could purchase alcohol from the mini supermarket after filling up with petrol at the pumps. P.C. Gardiner commented that, in his opinion, if this scenario was to prevail then Section 176 of the Licensing Act, 2003 would apply as the use was primarily that of a petrol station or garage and the mini market would be ancillary to that use.

There were no further questions to P.C. Gardiner.

The Consultant in Public Health Medicine (Paulette Myers) stated that she had made observations under the prevention of public nuisance and the protection of children from harm licensing objectives. She reported that Willenhall South had a major drink problem and that there were 65 licensed premises in the ward, the second highest level in Walsall after the town centre/ St Matthews ward area. She indicated that the Public Health team had tried to reduce the problems associated with alcohol in the area and to grant this application would only undermine that work. She added that Willenhall South had a high rate of alcohol related admissions to hospital.

Paulette Myers reported that Public Health England had identified three key influencers of alcohol consumption- price (affordability); social norms around its consumption (acceptability) and ease of purchase (availability). Whilst no individual retailer could be held responsible for facilitating all three influencers, this application, if granted, would extend the easier availability of alcohol and with it the potential health harms.

In summary, Paulette Myers indicated that Willenhall South suffered a high level of alcohol abuse with parents of children having drink problems. She questioned why additional alcohol sales were needed in the Willenhall South area. Mr Taylor asked if this was the first application Public Health Walsall had objected to. Paulette Myers replied no. He asked if Public Health Walsall objected to every premises licence application. Paulette Myers again replied no. Mr Taylor asked what criteria Public Health Walsall used in determining whether to object to an application or not. Paulette Myers replied Public Health Walsall looked at the availability of alcohol and the drinking levels in the area.

Mr Taylor asked if Public Health Walsall would accept the application if reduced hours for the sale of alcohol were offered. Mr Duffy replied possibly.

Councillor Rochelle asked if the main Morrisons store had a premises licence. Mr Taylor replied that it was licensed to sell alcohol from 6am to midnight Monday to Sunday.

Mr Taylor was invited to present his case and informed the Sub-Committee that Morrisons had applied for a premises licence for the petrol filling station shop opposite their convenience store on Middle Piece Way, Willenhall. There was nothing to stop the petrol station operating for 24 hours per day but at present, alcohol could not be sold in the shop hence the application.

Morrisons was a vastly experienced operator with over 500 stores and 320 petrol stations nationwide. 50 petrol stations currently held premises licences and all operated to the same high standards. Policies and procedures had been signed off with the various Licensing Authorities and Morrisons had never been prosecuted or been subject to review since the Licensing Act had come into force.

Referring to the application, Mr Taylor stated that shopping was changing and Morrisons wanted a small supermarket as a satellite to the main store which patrons could visit when the main store was closed or to pop in and out of for limited purchases. He continued that the application would see the mini market increased in size from 400 to 1000 sqft. The new shop would contain freezer units, chiller units, shelving for groceries, coffee sales, warmers for hot food, cash machines and a limited range of alcohol. He added that customers would use it for non-fuel related purchases from figures obtained from the existing 50 licensed petrol stations. One chiller unit would contain beer and wine with a second bay containing beer and red wine. Spirits would be available from behind the sales counter and no cheap lager or cider would be sold from the premises. The opening hours proposed would enable a shift worker to pick up a ready meal and a bottle of wine on the way home from work.

Mr Taylor reported that the enlarged shop unit would have CCTV, staff training (refreshed annually); 4 Personal Licence Holders and a minimum of two employees working at any one time. A Personal Licence Holder would be on site at all times and challenge 25 and till prompts would be in place requiring confirmation of age before the sale of alcohol could be completed. This meant that an electronic refusals register was automatically created.

This information would be reviewed monthly by the designated premises Supervisor and Head Office and the operation of the premises would be tailored accordingly.

Test purchasing was carried out by an independent company using 18 and 19 year olds and any member of staff who failed to spot them would be re-trained. The entrance door could be maglocked; alarms and panic buttons would be provided and the site would be manned 24 hours a day.

Referring to the police objections (appendix 3 refers) Mr Taylor indicated that the Police had stated that section 176 of the Act applied and therefore there should be no alcohol sales from the garage but

would be happy for alcohol to be sold if the hours of operation were reduced from 24 hours. Mr Taylor then provided information on projected customer use at the extended shop which indicated that 46% of people would shop at the kiosk normally; 20% would use the shop and obtain fuel and 34% would purchase fuel only. Therefore 66% of shoppers would use the shop showing that it was not primarily a garage and Section 176 did not apply in this case.

With regard to the suggestion that this was not a suitable site because of the close proximity of the adjoining cemetery, Mr Taylor referred to Police comments that it was a relatively crime free area. In view of these comments, he felt that his client's request for 24 hour sales of alcohol was justified. Regarding the representations from the Consultant in Public Health Medicine (appendix 4 refers) Mr Taylor indicated that Public Health was not a licensing objective in England. He agreed that Willenhall South might have an alcohol problem but as Morrisons store was not yet operational, none of these problems could be laid at their door.

P.C. Gardiner asked why Morrisons felt that a large shop in the petrol station was necessary when their supermarket was across the road. Mr Taylor replied that Morrisons had studied the area and felt that an additional convenience store would work there.

P.C. Gardiner asked if the extension to the shop would proceed if the premises licence was refused. Mr Taylor replied that it was unlikely it would go ahead without the premises licence.

P.C. Gardiner asked how Morrisons would prevent the premises becoming a 24 hour bar for problem drinkers. Mr Taylor replied that staff would apply the same rules as in the supermarket opposite, requiring patrons to take their alcohol away from the shop for consumption. He reminded the meeting that Morrisons could not be required to police the wider area under the Licensing Act.

Morrisons Licensing Manager, Kelly Nicholls, advised the meeting that Morrisons staff would not sell alcohol to anyone who appeared to be intoxicated. Police Constable Gardiner commented that if shoppers were refused alcohol then they might "kick off" which would mean staff would have to call for police assistance. Mr Taylor replied that Morrisons research had shown that it should not be a problem.

P.C. Gardiner asked about the time frame used to produce the pie chart referred to in appendix 5. Mr Taylor replied that it was based on a 12 weekly trading cycle.

The Legal Assistant, Mr Patouchas, asked if the pie chart was based on turnover or customer numbers. Mr Taylor replied that it was based on customer numbers, the intensity of use and reasons for visits. Some people went purely to shop for groceries; some for fuel and some for both. This information was obtained from till receipts.

Councillor Sarohi asked about the opening times of the main store. Kelly Nicholls replied that currently the main store was open from 7.a.m. to 10.p.m. daily but during busy periods such as the run up to Christmas, it could open from 6.a.m. to midnight under its own premises licence. She added that currently the petrol station was open from 6.a.m. to midnight but once the extension was built, 24 hour operation was required to ensure its viability.

Councillor Sarohi asked about the late night refreshment licence. Mr Taylor replied that coffee and sandwiches would be provided for consumption off the premises between 11.p.m. and 5.a.m daily.

Councillor Sarohi asked what would happen if customers were drinking in the shop?

Kelly Nicholls replied that staff would ask them to leave the premises. If they refused, then the Police would be called to eject them. Mr Taylor reminded the meeting that the Police had indicated that it was a relatively crime free area so there should not be a problem.

Councillor Sarohi expressed concern that if people filled their car up with petrol, then went into the shop to purchase groceries then their vehicle would be left at the pumps for longer causing delays and queuing at those pumps. He felt that tailbacks could extend to the access road. Mr Taylor replied that this was unlikely to be a problem as there were 12 pumps available to dispense fuel and 5 additional parking spaces would be provided adjacent to the shop extension for shoppers to use after they had refuelled their vehicles.

Councillor Sears asked Police Constable Gardiner if there were any problems associated with drinking in the cemetery at present. P.C. Gardiner replied no.

Councillor Rochelle asked if the shop sold groceries at present. Mr Taylor replied that it did but the range was limited by the size of the building (400sqft). He added that there were no alcohol sales there currently. Once the extension had been built, the range of products would be increased.

Patrick Duffy (Public Health) asked if the pie chart of 12 weeks' sales information was based on an existing site. Mr Taylor replied that it was. It was modelled on a site of similar site to that proposed in Willenhall. He referred to the problems with hospital admissions and mortality rates in Willenhall South from alcohol but added that the department worked well with Morrisons who had been very co-operative. He was still concerned that Morrisons would be extending the availability of alcohol in an area that already had a major drink problem.

Mr Duffy asked if Morrisons were aware that adults were purchasing alcohol for underage drinkers in the Willenhall area. Kelly Nicholls

replied that signs were provided in all Morrisons stores reminding adults that it was an offence for adults to purchase alcohol for minors.

There were no further questions to Mr Taylor.

The parties were invited to sum up and P.C. Gardiner stated that Morrisons were requesting a premises licence for a massively extended facility which would become a demand “hotspot” for the Police. He felt that the application was unsympathetic to the area. An area that was practically crime free would change if the licence was granted as requested and the Police would be called far more frequently.

The Consultant in Public Health Medicine (Paulette Myers) referred to the existing high number of licensed premises in the Willenhall South area and to the harm caused by alcohol consumption. She felt that granting this application would increase the availability of alcohol in a problem area.

Mr Taylor reminded the Sub-Committee that the application should be determined on Case Law and evidence not hearsay. He referred to the Council’s Licensing Policy and the Section 182 guidance and reminded members that shops were allowed to sell alcohol during their opening hours unless there was a good reason not to. The shop on the petrol station forecourt would be open for 24 hours and there was no good reason to restrict the sale of alcohol to reduced hours. The Police had indicated that this was a quiet corner of Willenhall but this had no bearing on the application before the Sub-Committee. Morrisons had a proven track record in dealing with alcohol on their sites as evidenced by their unblemished record. He reminded the Sub-Committee that Section 176 of the Licensing Act, 2003 did not apply in this case as it had clearly been demonstrated that the primary use was retail and that it was not a garage. He requested the Sub-Committee to grant the application as requested.

Councillor Rochelle asked if all parties were satisfied that they had had ample opportunity to air their views. This was confirmed and the parties withdrew from the meeting at 11.45.a.m.

The Licensing Sub-Committee carefully considered all the evidence submitted and the representations made during the hearing and it was

### **Resolved**

That the Sub-Committee grants the premises licence in respect of Morrisons daily petrol filling station, Middle Piece Way, Willenhall, WV13 1QG under Section 17 of the Licensing Act, 2003 as requested, having determined that Section 176 of the Act does not apply to this case and the licensing objectives have not be undermined.



All parties were re-admitted to the meeting at 12.15p.m. and informed of the Licensing Sub-Committee's decision. The parties were advised of their right of appeal to the local Magistrates Court within 21 days of receipt of the determination.

**Termination of Meeting**

The meeting terminated at 12.20 p.m.

Chairman.....

Date.....