

LICENSING SUB-COMMITTEE**9 October 2009****Attendance:**

Councillors:

Wright (Chairman) (P)

Mason (P)

Weston (P)

Officers in Attendance:

Mr J Myall (Licensing and Registration Manager)

Mrs C Tetstall (Property and Licensing Solicitor)

Ms C Stefanczuk (Assistant Licensing & Registration Officer)

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1. **APPLICATION FOR A PREMISES LICENCE – ST CROSS FILLING STATION, ST CROSS, WINCHESTER**
(Report [LR302](#) refers)

The Sub-Committee met to consider an application for a new premises licence for St Cross Filling Station, St Cross, Winchester.

Present at the meeting were Mr Mr Cheetham (Applicant's representative), Mr Botkai (Applicant's legal representative) Sergeant Hibberd and PC Miller (Hampshire Constabulary) and Mr Ingram (Environmental Protection Manager, Winchester City Council), who had made representations as responsible authorities. Also present were Dr Edwards and Mr Fernley representing a number of local residents as interested parties. There were approximately 50 local residents present.

Mr Myall advised that the applicant's representative had, since publication of the Report, requested that the proposed operating schedule be amended from the application as submitted and as set out in the Report. Mr Myall explained that the applicant was now no longer seeking to use the premises for the provision of late night refreshment between 2300 – 0500, Monday to Sunday. The applicant had also requested that the hours that the premises may be used for the sale of alcohol be revised to 0800 – 2200 (previously 2300), Monday to Sunday.

Mr Myall also clarified that representations against the application had been made direct to members of the Sub Committee by email and he requested that they be disregarded. The representations had drawn attention to Section 176 of the Licensing Act 2003 which defined those premises that, with sufficient evidence, may be classed as excluded premises whose primary use was as a garage. With regard to this, Mr Myall clarified that the application could be

determined. He explained that, if a premises licence was granted, but it was subsequently proven to be an 'excluded premises', then the licence would not be effective to authorise the sale of alcohol and it would be subject to enforcement action if the premises licence was used in those circumstances. Alternatively, the Sub-Committee could defer determination, pending evidence from the applicant to demonstrate that the premises were not excluded. However, this was not recommended, since the Sub Committee had no powers to compel the applicant to produce this evidence. Mr Myall also advised that Hampshire Constabulary had also cited this issue in their representation.

The Licensing Sub Committee adjourned at 9.45am to consider whether it wished to determine the proposed amended application and whether it was satisfied that it could determine the application without evidence of primary use.

The meeting reconvened at 9.50am and the Chairman reported that, having considered all the circumstances, the Sub Committee had agreed to proceed.

Mr Myall presented the application as set out in the Report and as amended above. He explained that the representations received from Hampshire Constabulary and the Environmental Protection Manager, Winchester City Council (as responsible authorities) had been withdrawn in light of the above amendments to the application. These had all raised concerns with regard to Crime and Disorder, Public Order and Public Safety. The Police had maintained their view that the Filling Station was an excluded premises.

In response to these concerns, certain conditions had been proposed, as set out in the Report. Mr Myall reported that these conditions were agreed by the applicant, subject to them being amended so that the licence holder should produce evidence to the Licensing Authority showing it was satisfied that the premises was not an excluded premises on a six monthly basis, rather than quarterly as originally suggested. The applicant had also agreed to appoint a local Designated Premises Supervisor (DPS) following concerns raised by the police.

Mr Myall advised that 65 relevant letters of representation had been received from interested parties. These were appended to the Report and generally related to Crime and Disorder and Public Nuisance and acknowledged that those problems already existed in the area.

At the invitation of the Chairman, PC Miller advised that, further to the amendments to the application to withdraw the sales of late night refreshments, the Police had withdrawn their representation to the application. It was also confirmed that representations had also been withdrawn for the same reason by the Environmental Protection Manager, Winchester City Council.

Further to questions from the Sub Committee and concerns about alcohol being consumed on the forecourt, Mr Botkai confirmed that CCTV was already installed at the premises and covered the area to the front of the garage. He drew attention to Condition 3 under the Crime and Disorder objective with

regard to CCTV and clarified that his client was satisfied with its inclusion. Mr Myall also advised that CCTV installation should be at a standard determined in consultation with the Police.

At the invitation of the Chairman, Mr Botkai addressed the Sub Committee. He advised that the application as submitted was in BP's standard form and was the same as for approximately 250 other filling stations across the country. However, he clarified that this application had now been tailored for this particular garage and to address some of the concerns subsequently raised by the responsible authorities and interested parties. He also advised that his client had agreed to all the conditions requested by the Police, subject to one minor amendment. Mr Botkai referred to representations from interested parties and categorised the concerns raised. The majority of these generally related to existing late night instances of nuisance or were matters irrelevant to the application, or where there was no substantive evidence.

He continued that some matters, such as the congregation of youths, had never been previously identified as an issue. He detailed his client's initial intentions regarding late night refreshment and reminded the hearing that this proposal had now been withdrawn. He also stated that BP operated the Challenge 21 initiative. Finally Mr Botkai drew attention to paragraph 29 on page 5 of the Council's Licensing Policy, which clarified that the main objective of this was to control Licensing matters and its primary role was not for the control of nuisance. He also suggested that most of the concerns raised in the interested parties' representations involved a fear of what 'might' happen as a result of the licence being granted, rather than on actual evidence as was required.

Responding to questions from the Sub Committee, Mr Botkai demonstrated where the alcohol would be placed within the store. He also stated that the strength of the alcohol to be sold was not of material concern and had not been previously raised by any of the interested parties. Mrs Tetstall also reminded that responsible authorities and interested parties had a right to request a future review of a licence, should material concerns be raised and representations submitted.

Mr Fernely addressed the Sub Committee as an interested party on behalf of a number of local residents who had submitted representations.

In summary, Mr Fernely reminded that alcohol related disorder and nuisance had been previously acknowledged as a problem in the town by the Winchester District Crime and Disorder Reduction Partnership. Winchester (including St Cross) had also been designated as an Alcohol Exclusion Zone. He suggested that alcohol sales were likely to contribute to crime and disorder in this area. St Cross was a sensitive residential area and customers were unlikely to be local residents. Mr Fernely was concerned at a current lack of visible police presence in the area and that an increase in criminal activity was inevitable should the licence be granted. He reported the concerns of residents of the capability of staff at the filling station to properly manage the establishment and also that they had no jurisdiction on monitoring the behaviour of customers beyond the boundaries of the establishment – where the impact on residents was of concern.

Dr Edwards addressed the Sub Committee as an interested party on behalf of a number of local residents who had submitted representations.

In summary, Dr Edwards advised that he still had concerns despite the amendments made to the application. He reported that residents currently had concerns that were related to the premises and that these would undoubtedly increase should the application be permitted. He drew attention to concerns about light nuisance from the premises that caused disturbance to those (including himself and his family) who lived close by. He also reported on noise disturbance from early morning deliveries. Dr Edwards suggested that the garage was not well managed and therefore he had concerns for the future when it could be selling alcohol.

Continuing, Dr Edwards drew attention to representations made by residents against the application with regard to the licensing objectives. He detailed concerns related to the Public Nuisance objective and he considered that the intentions of the Act were to keep communities safe. These included noise and disturbance in what was a normally quiet residential area. Litter was also discarded in gardens and this was likely to increase should the opening hours be extended. There was also likely to be disturbance from additional deliveries to the premises. With regard to the Protection of Children objective, he detailed occurrences of noise that had disturbed his children and also suggested that sale of alcohol late at night and early in the morning was not appropriate in an area where young families resided.

In response to the representation, at the invitation of the Chairman, Mr Botkai clarified with Dr Edwards that the majority of disturbance in the area occurred after 9pm.

The Chairman then invited other interested parties to address the Sub-Committee.

Mrs Baker (resident of Hanover Lodge, St Cross Road) advised that she was representing the 48 residents in the sheltered accommodation. She was concerned that customers of the garage would purchase alcohol on the way into Winchester, before drinking at the various establishments in the town centre. This would therefore exacerbate the problems associated with alcohol that were already apparent in the town centre. Mrs Baker also referred to people congregating in the vicinity of Hanover Lodge and previous instances of intruders in the complex.

Mr Diamond (resident of Norman Road, St Cross) reminded that St Cross was within the Alcohol Exclusion Zone and also that alcohol related criminal activity already existed in the area. Mr Diamond queried how the sale of alcohol in the mornings would be of benefit to local residents.

Mr Fitzgerald (resident of St Cross Road) queried whether a need for selling alcohol at the garage had been proven? In response, Mr Myall clarified that the Licensing Act 2003 did not require a 'need' to be demonstrated.

Mrs Sturgess (resident of St Cross Road) was concerned at a seemingly large turnover of staff at the garage. Therefore, she questioned how they could be adequately trained. There should also be a Designated Premises Supervisor at the premises. She queried how many of the 250 licences held by BP had been previously refused.

At the invitation of the Chairman, Mr Botkai responded to Mrs Sturgess' representation and explained that there would be a manager of the garage and up to four members of staff. The manager would be the Designated Premises Supervisor and some cashiers would become personal licence holders. They would all be trained on the Challenge 21 initiative. Mr Botkai confirmed that of the 250 licences held by BP, none had been previously refused, so far as he was aware.

At the invitation of the Chairman, following a short adjournment to allow for consultation with Mr Botkai, Sergeant Hibbert addressed the Sub Committee.

Sergeant Hibbert clarified why the Police had withdrawn their objections following the applicant's amendment to the application to remove the request for late night refreshment. He stated that police resources were already stretched from patrolling the town centre in the evenings and would have had difficulty to additionally cover St Cross late at night. However, following complaints from residents, St Cross had been policed both overtly and covertly. He advised that crime and disturbance in St Cross was related to people returning home from the town centre after most of the pubs closed and disturbances were generally not dissimilar to any other area.

At the invitation of the Chairman, Mr Botkai summed up the proposals for the Sub-Committee. He advised that his client had appreciated the concerns of local residents and he acknowledged that the application could have perhaps been tailored specifically for this community at the outset. However, all BP licence applications were in a standard form, but it did not necessarily mean that the establishment would operate those hours of the license. There were many other garages in residential areas across the country. Further to this, alcohol sales would be a small element of the total sales area of the premises and he was satisfied that the shop would be an improved facility for residents, because there was no off-licence in the immediate vicinity. He was not expecting the premises to become a destination specifically for the purchase of alcohol. He also drew attention to BP's policy of not selling high strength beers and lagers and that there was no requirement for a condition to enforce this. Finally, Mr Botkai reminded that there were procedures for licences to be reviewed; however, he urged anyone with concerns or unresolved issues related to the premises, to contact the manager of the premises in the first instance.

The Sub-Committee retired to deliberate in camera.

In his closing remarks, the Chairman stated that the Sub-Committee had carefully considered the application and the representations made. It had taken into account the duties under the Crime and Disorder Act 1998, and the rights set out in the Human Rights Act 1998.

The Chairman also reminded members of the public that, as interested parties, they had the right, should there be breaches of the licensing objectives or conditions of the licence, to request that it be reviewed.

RESOLVED:

That the application (as amended by the applicant) for the sale of alcohol from 0800 to 2200 each day be approved, subject to the agreed conditions with the amendment to Condition 1 under All Licensing Conditions, and two additional conditions set out below:

- Condition 1 All Licensing Conditions to read (amended words in italics)

Data that the licence holder produces to satisfy themselves that the premises is not an excluded premises shall be submitted to the licensing authority on a *six monthly* basis.

- Condition 3 under the Crime and Disorder Objective – first sentence should be amended to read (additional words in italics):

All public areas shall be covered by CCTV *including the area immediately to the front of the premises.*

- New Condition 8 under the Crime and Disorder Objective, to read as follows:

8. Appoint a local Designated Premises Supervisor for the premises.

REASON FOR DECISION:

The Sub-Committee resolved to grant the licence, with conditions attached in order to further the licensing objectives.

The meeting commenced at 9.30pm and concluded at 12.20pm.

Chairman