

LICENSING SUB-COMMITTEE

Minutes of the proceedings at a meeting of the Licensing Sub-Committee held in the District Council Chamber - South Lakeland House, on Wednesday, 12 December 2018, at 2.30 p.m.

Present

Councillors

John Holmes

Kevin Holmes

David Webster

Officers

Inge Booth

Senior Committee Services Officer

Anthea Lowe

Solicitor to the Council

Karen Partington

Licensing Officer

Fraser Robertson

Senior Communications Officer

LS/26 ELECTION OF CHAIRMAN

RESOLVED – That Councillor John Holmes be elected Chairman for the meeting.

LS/27 APOLOGIES AND RECONSTITUTION OF MEMBERSHIP

There being no apologies for absence, no reconstitution of membership was necessary.

LS/28 INTRODUCTIONS

The Chairman made introductions and read out the procedure for the meeting.

LS/29 DECLARATIONS OF INTEREST

REESOLVED - That it be noted that no declarations of interest were raised.

LS/30 LOCAL GOVERNMENT ACT 1972 - EXCLUDED ITEMS

RESOLVED – That it be noted that there are no excluded items on the agenda.

LS/31 APPLICATION FOR VARIATION OF A PREMISES LICENCE UNDER THE LICENSING ACT 2003 - ASDA STORES LIMITED, KENDAL

The Licensing Officer presented a report which requested consideration of an application for a variation to a premises licence in respect of Asda Stores, Kendal. She provided details of the consultation which had taken place as set out in the report, and advised that, whilst there had been no responses received from any of the Responsible Authorities, one had been received from local residents, Mr and Mrs Williams, raising concerns with regard to the effect of the variation on the licensing objective pertaining to “The Prevention of Public Nuisance”, as attached at Appendix B to the report. This had been brought to the attention of the applicant whose solicitor had written to the representatives to provide clarity on the application, as attached at Appendix C to the report, however, the representatives had not subsequently withdrawn their objection. In response to a query raised by a Member, the Licensing Officer clarified that no meeting had taken place between the applicant or their solicitor and the representatives.

The applicant's solicitor, Clare Johnson, was present, together with Mark Swift, Manager of the Asda, Kendal Store.

Ms Johnson provided details of the Asda Kendal Store's current licensable activities and explained that the application was for an increase to 24 hours each day of the week for the sale of alcohol, which equated to an increase in only nine hours. The application stemmed from the fact that the store could not currently sell alcohol until 8.00 a.m. on a Monday and a desire to operate earlier on Christmas Eve, which would fall on a Monday this year, and on weekdays for a number of forthcoming years.

The application was also for a variation for 24 hour opening and for late night refreshments from the hours of 23:00 to 05:00.

Ms Johnson referred to the concerns raised by the representatives with regard to the sale of late night refreshments between the hours of 23:00 and 05:00. She advised that there was currently no intention to open the café during these hours but that the application was to enable the sale of, for example, hot chicken and sausage rolls, as well as hot drinks. She pointed out that hot chickens were currently sold until 21:00 hours.

Ms Johnson pointed out that Asda operated many such licences and informed the Sub-Committee that she had acted for the company for 14 years during which time there had been no issues or reviews carried out as a result of the Licensing Act. Asda acted in some challenging areas and there had been no adverse reports, despite the sale of late night refreshments.

Ms Johnson provided details with regard to Challenge 25 and on how the company strictly adhered to the scheme. She referred to the training provided by Asda to its staff and explained that an independent company was used to carry out test purchases.

Ms Johnson informed the Sub-Committee about the CCTV system at the Asda Kendal Store and highlighted the fact that no issues had been raised in this regard by the Police. Nothing had been heard from Environmental Health on the subject of public nuisance within the area. Ms Johnson further drew attention to the fact that, despite Mrs Williams' statement that she had endured countless acts of public nuisance over the past 15 year and met with Environmental Health and the Police in this regard, there had been no objections received from any of the Responsible Authorities.

Ms Johnson referred to the objectors' comments with regard to the prevention of harm to children and the need for additional conditions, however, pointed out that those currently in place were sufficient in the absence of evidence to the contrary. Again, the Responsible Authorities had not requested additional conditions in this regard.

Ms Johnson addressed the objectors' concerns regarding public nuisance about which nothing had been raised by the Responsible Authorities. Ms Johnson reiterated the fact that there was currently no intention for the café to remain open all night. She considered that the objectors' comments in this regard were purely speculative and suggested that they would be able to apply for a review of the premises licence should problems arise.

Ms Johnson disputed the objectors' comments on litter and debris from Asda customers and advised that staff regularly cleared litter from the property. Ms Johnson made reference to the Council recycling area and informed the Sub-Committee that Asda staff ensured that this area was clear following the emptying of the bins. In addition, although not on its land, Asda had recently managed trees which had fallen into the nearby river creating a dam.

On the topic of public safety, Ms Johnson said that, although the Manager had approached a group of youths on one occasion some four months ago to ask them to leave the area where they were gathering before setting off together, there had not been any issues with “boy racers” in the area.

Ms Johnson closed by saying that this was a responsible application from a company with an excellent reputation and vast experience in operating licences.

In response to a query raised by a Member, the Licensing Officer confirmed that the text on page 15 of the report referred to Asda’s current premises licence.

Members put questions to the applicant’s solicitor. In response, Ms Johnson reiterated that there were currently no plans to operate the café throughout the night. Customers wishing to purchase a hot drink paid for a cup at the checkout and then filled it at the vending machine, which was the method by which Asda sold late night refreshments. Self-sufficient vending machines were, in fact, exempt from the licensing requirements. Ms Johnson clarified that the hot food such as chickens and sausage rolls would be served at the deli counter. This was currently carried out until 21:00 hours. Bread baking commenced at 05:00 hours and, if brought forward by half an hour, would require a licence. Ms Johnson informed the Sub-Committee that there had been an issue with regard to parked lorries in the past due to refrigeration units being left running, which the Manager had addressed. She pointed out, however, that this should not affect the objectors whose property was not near the delivery area. Those who were likely to be affected were the residents in the flats behind Asda, however, the issue had nothing to do with Asda’s licensable activities. Ms Johnson explained that Asda could only open for six hours on a Sunday under trading legislation. The store would, however, open until midnight on a Saturday. The application was for 24 hour opening so that, should Sunday legislation change, then the company would not have to come back for a further variation which was an expensive process. With regard to the objectors’ comments about CCTV not working, Ms Johnson believed that if there was an issue, then the Police would have sought an explicit CCTV condition. Ms Johnson clarified that Asda wished to open the Kendal Store at one minute past midnight on Monday, 24 December 2018, however, was unsure as to whether the company would choose to open at this time every Monday. The store currently opened at 07:00 hours on a Monday, with the sale of alcohol commencing at 08:00 hours.

There being no further questions, Ms Johnson summarised by saying that the variation was, in effect, for nine additional hours for the supply of alcohol, plus late night refreshment. Evidence was that Asda had been running the store effectively for 24 hours a day for many years, and only one objection had been received in respect of the application, which provided no evidence, nor was it supported by the responsible authorities. She referred to Home Office guidance stating that an application should be determined based on appropriate evidence and not on speculation. Ms Johnson appreciated the objectors’ concerns, however, reminded Members that Asda operated successfully in far more challenging areas. She also drew attention to the fact that, should the application be granted and any issues arise in the future, the objectors would be able to raise objections and seek a review.

Note – The Sub-Committee passed a resolution to adjourn the meeting to exclude the press and public in making its decision, pursuant to Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) Order 2006 by virtue of the paragraph indicated:-

Paragraph 5 – Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

The Sub-Committee, supported by the Solicitor to the Council, then withdrew, at 3.05 p.m., to consider the circumstances put forward.

The meeting reconvened at 3.25 p.m., and the Chairman of the Sub-Committee asked the Solicitor to the Council to communicate the Sub-Committee's decision.

The Solicitor to the Council stated that the Sub-Committee had considered all of the evidence provided, both orally and in writing. This included the representations made by all parties at the Sub-Committee meeting.

RESOLVED – That the application for the variation to the Premises Licence in respect of Asda Stores, Kendal, be granted for the following activities:-

Late Night Refreshment	Monday to Sunday	23:00 hours to 05:00 hours
Supply of Alcohol	Monday to Sunday	00:00 hours to 24:00 hours
Premises Open Hours	Monday to Sunday	00:00 hours to 24:00 hours

In reaching the decision, the Sub-Committee had regard to the following facts:-

That the applicant is a national retailer that, evidence would suggest, generally appears to operate its stores in accordance with the licensing regime.

That no representations were received from any of the Responsible Authorities despite the fact that the objectors had been in contact with them over a 15 year period regarding issues that they believed amounted to nuisance and/or crime and disorder.

Members formed the view that this indicated that there was no evidence to support the suggestion that the applicant was unable to uphold the licensing objectives.

Members of the Sub-Committee also noted that the extra licensing hours requested within the application were relatively minor.

Members also considered the content of the objection from Mr and Mrs Williams and the concerns raised therein. Members noted the request that CCTV should be a subject of condition but, given that the applicant already operated a CCTV system, this seemed neither necessary nor appropriate. On consideration, Members felt that existing data protection legislation provided adequate safeguards for members of the public to gain access to CCTV footage from the premises through the appropriate authorities, should the need arise.

The Panel also felt that there was no evidence provided by the objectors to support the submissions made within their representations.

It was also noted that, except for Mr and Mrs Williams, no other residents had entered an objection.

The Members of the Sub-Committee had regard to the Council's Statement of Licensing Policy and the statutory guidance issued under the Licensing Act 2003 updated April 2018, especially to those paragraphs referred to within the officers' report. Notably, in relation to the matter of crime and disorder, Members considered that the guidance states Licensing Authorities should look to the police as the main source of advice on crime and disorder. It was noted that no representation had been received from Cumbria Constabulary.

The Panel also considered paragraph 2.16 which sets out what might constitute a public nuisance. Additionally, paragraph 2.15 requires Members to consider the effect of licensable activities on persons living and working in the area. Notwithstanding the contents of the objection, Members were unable to identify any evidence, based upon the information provided to the Sub-Committee, to support a suggestion that the licensable activities would have a negative effect on those living/working in the area.

Having had regard to the Licensing Objectives, the reasons for reaching this decision were:-

There was a lack of evidence to support any concerns.

The information provided during the Sub-Committee meeting showed evidence of good quality staff training in relation to alcohol sales.

There was no evidence from any responsible authority to suggest a different decision should have been reached.

Members were also mindful that, if any issues did arise (supported by evidence), it was open to any interested party to apply for a review of the premises licence.

Note – All present were notified that the decision would be confirmed in writing within the next few days and of the right to appeal to the Magistrates' Court within 21 days of notification of the decision.

The meeting ended at 3.30 p.m.