

# **SOUTH HAMS LICENSING SUB- COMMITTEE**



## **Minutes** of a meeting of the **South Hams Licensing Sub-Committee** held on **Wednesday, 12th August, 2020** at **10.00 am** at the **Via Skype**

Present:        **Councillors:**

Cllr Holway  
Cllr Reeve

Cllr Brown

### **In attendance:**

Councillors:

Cllr Birch

Cllr Hodgson

Others in attendance and participating:

Deputy Monitoring Officer

Specialist – Licensing

Senior Case Manger – Licensing

Specialist – Democratic Services

Senior Case Manager – Democratic Services

Mr R Taylor – Applicant

Ms K Nichols – Applicant

Speakers: Ms B Curtis, Ms C Luscombe, Ms C De Valero,

Ms P Shepherd, Mr K Edwards

1.        **Appointment of Chairman**  
LSC.1/20

### **RESOLVED**

That Cllr Brown be appointed Chairman for the duration of the meeting.

2.        **Declarations of Interest**  
LSC.2/20

Members and officers were invited to declare any interests in the items of business to be considered during the course of the meeting. There were none.

3. **Application to vary the Premises Licence of Morrisons Service Station, Station Road, Totnes**  
LSC.3/20

The Sub-Committee considered a report that sought to determine an application to vary the premises licence at Morrisons Service Station, Station Road, Totnes.

The Licensing Specialist introduced the report and outlined the details of the application (as stated in the application form at Appendix A, B (i), B (ii), and C of the presented agenda report). Whilst other matters had been raised during the consultation phase, the Licensing Specialist reminded the Sub-Committee that its decision had to be based upon the four licensing objectives.

AOSB, under age sales, noise and disturbance, litter. There were no representations from responsible authorities.

**1. Address by the Applicant**

In his address, the applicant provided some background information to the establishment of the business and proceeded to make specific reference to:-

- The service station already being able to open 24 hours a day and sell alcohol for 18 hours a day. Service station would now be opening for 24 hours.
- Reason for extended hours was due to impact of the pandemic resulting in increased number of visitors to the region, and allowed people to shop when they felt most comfortable.
- Measures Morrisons would put in place included: full digital CCTV, panic buttons, link to main store, training for staff, operation of 25 years minimum age limit for buying, choice of alcohol for sale to avoid strong ciders etc.
- Morrisons had no current problems with alcohol sales and while the applicant accepted there were concerns over the sale of alcohol felt this would be controllable by sales. The service station was not currently selling high percentage beers and ciders but the applicant confirmed they would be happy to accept a condition confirming this
- Letters of Representations, in his opinion, did not address any likely affect
- The Applicant confirmed they were not seeking a night hatch as it would be too small for many purchases
- No additional policies introduced as there are existing policies in place that will continue to operate through extended hours

**2. Address by Objectors**

At this point, the Objectors who had registered a letter of representation were invited to make their submissions to the meeting. In so doing, the following points were raised:-

- The Service Station is close to an old people's complex which could cause them to be intimidated
- It is also close to hospital
- Objectors felt that there were plenty of opportunities in town to buy alcohol during 'normal' times
- This license could potentially increase crime and disorder
- It could create a hot spot for gathering
- Totnes Connection Hub work with homeless and addicts and said they feared extended opening would impact on accessing these people
- Large green space belonging to the garage could be used by homeless and youth if alcohol were to be sold during the night

### **3. Address by the Town Council Representative**

At this point, the Town Council Representative was invited to make his submissions to the meeting. In so doing, the following points were raised:-

- The Ward Member had concerns about drink drivers and a possible impact of drivers increased speeding drivers
- Potential for increased noise
- The site is close to skate park, hospital, old folks complex
- Following question from Sub-committee Member, time of most anti-social behaviour (ASB) is around pub closing and up to 2:00 o'clock am.

### **4. Address by the local Ward Members**

A local Ward Member addressed the Sub-Committee and made reference to:-

- That Totnes already suffered from Anti Social Behaviour issues and that he was concerned this would escalate with alcohol being more readily available
- South Hams District Council had issued a Public Spaces Protection Order (PSPO), due to alcohol, in 2018 for an area very close to the garage.
- Garage hours only until 9:00 pm, not midnight as Applicant stated
- The Ward Member felt there had been no attempt by Morrisons to consult locals

### **4. Sub-Committee Questions**

Having listened to each of the representations, the Chairman requested that the Sub-Committee ask any questions of clarity. In so doing, the following points were raised:-

- (a) Officer clarified PSPO allows police to surrender their alcohol in a particular area, several areas in Totnes but none into Station Road but that it was in Coronation Rd next to Supermarket and across the roundabout from the garage. PSPO will lapse in January 2021, unless it is re-instated following new process. A map of the PSPO was displayed.
- (b) Applicant confirmed hours of opening he gave are correct, and that Google was listing them incorrectly

All objectors were asked if they wished to attend the afternoon session or have their objections carried forward. All requested their objections be carried forward save the Ward Member representative who confirmed he would attend the second session.

Applicant summed up.

Once all parties were content that they had no further issues or questions to raise, the Sub Committee then adjourned (at 11:35am) to consider the application and then reconvened at 2:00pm.

## 5. The Decision

In announcing the Sub-Committee decision, the following statement was issued:

- 1. The Licensing Sub-Committee was convened on 12 August 2020 to determine an application by the Applicant to vary the Premises Licence under the Licensing Act 2003 to remove the restriction of the sale of alcohol (currently permitted between 0600 to midnight) to enable sales of alcohol 24 (twenty four) hours a day.*
- 2. The Sub-Committee considered the application form and representations received in writing and made at the hearing.*
- 3. The Sub-Committee decided to **REFUSE** the Application.*

### **REASONS FOR THE DECISION**

- 4. The Sub-Committee considered the application in line with the four Licensing Objectives and consideration was also given to the Government Guidance issued under Section 182 of the 2003 Act, the submitted Operating Schedule and the Council's Statement of Licensing Policy.*
- 5. The Sub-Committee considered the application form together with representations received in writing, the Licensing Officer's report, and the representations of the Applicant and third parties made at the Hearing.*
- 6. The Sub-Committee listened carefully to Mr Taylor on behalf of the Applicant who advised that the Service Station currently only opens till 11pm but can already sell all products other than alcohol for a period of 24 hours. Mr Taylor explained that it was the intention of the Applicant to open the Service Station, if the application is granted to operate 24 hours. The reason for this change was the coronavirus pandemic and the influx of tourists. The increased opening hours would enable people to shop when*

*they were most comfortable and there was an increase in grocery sales from Service Stations.*

- 7. Mr Taylor listed the policies that the Applicant has in place to meet the Licensing Objectives. These included CCTV, personal licence holders, till prompts, Challenge 25, independent test purchasing, and alcohol situated behind the till. Copies of these policies were not provided with the application or to the Sub-Committee at the Hearing.*
- 8. The Sub Committee heard from Ms Nicholls who advised that she was responsible for licensing across the country and she advised that the Applicant's policies were robust because Morrisons valued and protected their licences.*
- 9. The Sub-Committee has considered carefully Mr Taylor's submissions that there is no evidence that the variation in hours is likely to affect the Licensing Objectives and further that the representations from third parties are not relevant.*
- 10. The Sub-Committee has not taken into account those representations which objected on the basis of an absence of need and or greed in seeking a variation, as in the opinion of the Sub-Committee they were not relevant.*
- 11. The Sub - Committee accepts that concerns regarding public health are not matters that the Committee could consider as Public Health is not one of the four Licensing Objectives.*
- 12. The Sub-Committee has considered the Statutory Guidance and the Council's Licensing Policy. In particular its attention was drawn to paragraph 6.8 of the Council's policy which effectively repeats paragraph 10.15 of the Statutory Guidance does not seek to distinguish between the types of goods that can be sold when the premises are open unless there are exceptional reasons relating to the licensing objectives. The Sub - Committee also notes that the same paragraph provides by way of examples, premises which have been the focal point of disorder and disturbance or particularly early opening time where the availability of alcohol could impact adversely on the Licensing Objectives.*
- 13. The Sub Committee noted that in January 2018 when the Applicant had previously sought the same variation the police had sought conditions relating to the use of a night hatch and a condition restricting the sale of super strength beer, lager or cider save for specialist products. The Applicant advised that they would accept a similar condition regarding the alcohol but not a night hatch. The Sub-Committee was not satisfied that a condition seeking to restrict the sale of particular types of alcohol would address the concerns raised in the representations. The Sub-Committee has afforded significant weight to the fact that none of the Responsible Authorities listed in the Licensing Officer's report made representations on*

*this application and conditions had not been requested by the police.*

- 14. The Sub-Committee considered the representations received from residents, Councillors, those working with or responsible for children and organisations involved in addressing directly, problems related to the misuse of alcohol in Totnes. These problems are on-going despite the current restriction on the sale of alcohol at the Service Station. It was a matter for the Sub-Committee to determine what weight to give to the representations of third parties and the absence of a representation from the Responsible Authorities did not mean that the representations received should be afforded no weight. The Sub-Committee noted that the Designated Premises Supervisor, listed on the application was not present at the Hearing.*
- 15. In addition to the written representations received the Sub-Committee heard from Carmen Luscombe a resident living near the petrol station who provided crime statistics for Totnes in May 2020. Ms Luscombe detailed that there were 68 incidents including 22 relating to anti-social behaviour, 15 violent crime and 8 public order offences. The figures were not disputed. Ms Luscombe also advised that she had suffered from disturbance caused by people intoxicated with alcohol and that the Service Station is located in close proximity to a number of residential properties.*
- 16. The Sub-Committee also heard from representatives of Totnes Connection Hub regarding people in Totnes struggling with addiction, and residents concerns that increased access to alcohol will contribute to public nuisance, crime and disorder and present a risk of harm to children.*
- 17. The Sub-Committee heard from Councillor Hodgson on behalf of Totnes Town Council who were concerned of the impact of increased alcohol sales particularly at night, issues around public nuisance in a residential area when the area is generally quiet in the early hours and the safe guarding of young people.*
- 18. Cllr Birch a Totnes Councillor advised the Sub-Committee of anti social behaviour occurring in Totnes because of excessive alcohol, and spoke on behalf of the Street Pastors of Totnes who have experience of working with people in Totnes both adults and children under the influence of alcohol.*
- 19. The Applicant relied on the absence of representations of Responsible Authorities to conclude that there was no evidence that the grant of the variation was likely to effect the promotion of the Licensing Objectives. However the Sub-Committee disagrees and having listened carefully to all the representations, has concluded that it is more probable than not that the variation would result in a failure to meet Licensing*

*Objectives to prevent Crime and Disorder, to prevent Public Nuisance and to protect Children from Harm.*

20. *The Sub-Committee concludes that it would not be appropriate to grant the application. This decision is made in accordance with section 6.4 and 6.8 of the Council's Statement of Licensing Policy. The application is **REFUSED** and the Premises Licence will remain unchanged so that all existing conditions continue to apply.*

4. **The following Application will not be considered before 2.00pm  
Application to vary the Premises Licence of Morrisons,  
Coronation Road, Totnes**

LSC.4/20

The Sub-Committee considered a report that sought to determine an application to vary the premises licence at Morrisons, Coronation Road, Totnes.

The Licensing Specialist introduced the report and outlined the details of the application (as stated in the application form at Appendix A, B (i), B (ii), and C of the presented agenda report). Whilst other matters had been raised during the consultation phase, the Licensing Specialist reminded the Sub-Committee that its decision had to be based upon the four licensing objectives.

**1. Address by the Applicant**

In his address, the applicant provided some background information to the establishment of the business and proceeded to make specific reference to:-

- The similar application which had been made earlier
- The store could already open 24hours a day, could sell alcohol for 18 hours a day with no issue. Trading currently 7am to 11pm but Morrisons wanted the flexibility to trade for 24 hours
- Alcohol was currently on sale from the store with no issue in terms of disturbance
- Morrisons was looking to set up hot refreshments at night, but would not be opening café
- This application was hoped to help with influx of tourists. The applicant confirmed that many other tourist areas in the South West had already approved new requests for 24 hour sales
- Corona virus pandemic was impacting on shopping, and the applicant hoped to increase available hours to give increased options to shoppers so they were able to shop when they felt most comfortable to do so
- Age 25 in operation, along with till checks and training
- Morrisons have never had any complaints over licensing and guard licenses diligently as a reputational issue
- The store would risk assess to evaluate the need for any additional security

## **2. Address by Objectors**

At this point, the Objectors who had registered a letter of representation were invited to make their submissions to the meeting. In so doing, the following points were raised:-

- From earlier representation:
  - Close to old people complex which could cause them to be intimidated
  - Close to hospital
  - Plenty of opportunities in town to buy alcohol during 'normal' time
  - Potential for increase in crime and disorder
  - Could create a hot spot for gathering
  - Totnes Connection Hub work with homeless and addicts feared extended opening would impact on accessing these people
  - Large green space belonging to the garage could be used by homeless and youth if alcohol were to be sold during the night
- From afternoon Representative:
  - A nearby resident stated that he had been complaining to Morrisons for the last three or four years regarding the noise of deliveries. He now slept on the other side of his house to count this. The applicant offered to get the Manager to contact him for the noise complaints which have gone unanswered so far for which the resident thanked him.
  - The resident stated that he had experienced an increase in noise and disturbance overnight – which did increase when hours changed from 8:00pm to 11:00pm

## **3. Address by the Town Council Representative**

At this point, the Town Council Representative was invited to make his submissions to the meeting. In so doing, the following points were raised:-

- From earlier representation:
  - Concern about drink drivers and impact of increased speeding drivers
  - Increased noise
  - Close to skate park, hospital, old folks complex
  - Following question from Sub-committee Member, time of most anti-social behaviour (ASB) is around pub closing and up to 2:00 o'clock am.

## **4. Address by the local Ward Members**

The local Ward Members both addressed the Sub-Committee and made reference to:-

- After 5:00 pm there were no outlets for alcohol sales in Totnes except from Morrisons Store and Garage and local pubs
- PSPO showed there was an alcohol problem in Totnes
- Store was immediately adjacent to protection order as seen on the map in the morning session



- Already noise nuisance and antisocial behaviour in the area, both day and night
- Totnes Caring stated that they believed the 24 hour license would increase drinking, and, as the car park runs along river path, there would be increased danger for drinkers.
- Street Pastors stated that there were already groups of youngsters who gathered outside Morrisons where drink was being purchased by older people. It was felt that this would increase if the license approved.
- Ward Members wanted clarification that the Letters of Representations would be accepted as evidence. The Lawyer then confirmed that all representations made would be taken into account during deliberations. It was reiterated that the Committee must decide what weight to give on submissions made, both written and in person.

## **5. Sub-Committee Questions**

Having listened to each of the representations, the Chairman requested that the Sub-Committee ask any questions of clarity. In so doing, the following points were raised:-

- (a) Applicant confirmed he would be happy for a condition to be added for one guard to be on duty in the store if the application was approved
- (b) The applicant clarified that opening would be flexible, as the store already had 18 hours where they were allowed to open but currently opened less. It was possible that if license were granted then they would not use all the available hours all the time but Morrisons were looking to have the flexibility.
- (c) Late night refreshment on application referred to refreshments indoors and outdoors, the applicant clarified outdoors refers to hot refreshments being taken away and that there was no suggestion of anything outside or in the car park.
- (d) Lawyer reaffirmed public health was not an issue to be considered in this license deliberation
- (e) Off sales are allowed from a number of pubs therefore Totnes does have outlets for out of hours alcohol sales after 5:00pm as well as Morrisons.

Once all parties were content that they had no further issues or questions to raise, the Sub Committee then adjourned (at 14:5pm) to consider the application. Decision to be issued in writing by 18<sup>th</sup> August.

### **1. The Decision**

In announcing the Sub-Committee decision, the Chairman published the following statement:

1. *The Licensing Sub-Committee was convened on 12 August 2020 to determine an application by the Applicant to vary the Premises Licence under the Licensing Act 2003 to remove the restriction of the sale of alcohol and opening*

*hours to 24 hours rather than the current hours of 6am to midnight and to include the provision of late night refreshment from 2300hrs to 0500hrs*

- 2. The Sub-Committee considered the application form and representations received in writing and made at the hearing.*
- 3. The Sub-Committee decided to **GRANT** the Application to extend the opening times to 24 hours and to allow the provision of late night refreshment but to **REFUSE** that part of the Application relating to the sale of alcohol between the hours of midnight and 0600 hours.*

### **REASONS FOR THE DECISION**

- 4. The Sub-Committee considered the application in line with the four Licensing Objectives and consideration was also given to the Government Guidance issued under Section 182 of the 2003 Act, the submitted Operating Schedule and the Council's Statement of Licensing Policy.*
- 5. The Sub-Committee considered the application form together with representations received in writing, the Licensing Officer's report, and the representations of the Applicant and third parties made at the Hearing.*
- 6. The Sub-Committee listened carefully to Mr Taylor on behalf of the Applicant who advised that Supermarket could open on the existing licence for 24 hours. Mr Taylor explained that the Supermarket was looking for flexibility regarding its opening hours and to enable seasonal variation. The reason for this change was the coronavirus pandemic and the influx of tourists. Shopping was changing and the increased opening hours would enable people to shop when they were most comfortable. The Sub Committee noted that the application refers to late night refreshment taking place inside and outside. Mr Taylor advised that was to enable the eating of food outside but there was no intention to provide sales of refreshments outside the premises.*
- 7. Mr Taylor listed the policies that the Applicant has in place to meet the Licensing Objectives. These included CCTV, personal licence holders, till prompts, Challenge 25, independent test purchasing, and alcohol situated behind the till. The Supermarket had delivery schedules to avoid late night deliveries. Copies of these policies were not provided with the application or to the Sub-Committee at the Hearing.*
- 8. The Sub Committee heard from Ms Nicholls who advised that she was responsible for licensing across the country and she advised that the Applicant's policies were robust because Morrisons valued and protected their licences. She advised that they would have at least one SIA Guard on duty each*

*night. The Sub-Committee noted that the car park provides some residential car parking in addition to serving Morrisons customers and general members of the public.*

- 9. The Sub-Committee has considered carefully Mr Taylor's submissions that there is no evidence that the variation in hours is likely to effect the Licensing Objectives and further that the representations from third parties are not relevant.*
- 10. The Sub-Committee has not taken into account those representations which objected on the basis of an absence of need and or greed in seeking a variation, as in the opinion of the Sub-Committee they were not relevant.*
- 11. The Sub-Committee accepts that concerns regarding public health are not matters that the Committee could consider as Public Health is not one of the four Licensing Objectives.*
- 12. The Sub-Committee has considered the Statutory Guidance and the Council's Licensing Policy. In particular its attention was drawn to paragraph 6.8 of the Council's policy which effectively repeats paragraph 10.15 of the Statutory Guidance does not seek to distinguish between the types of goods that can be sold when the premises are open unless there are exceptional reasons relating to the licensing objectives. The Sub -Committee also notes that the same paragraph provides by way of examples, premises which have been the focal point of disorder and disturbance or particularly early opening time where the availability of alcohol could impact adversely on the Licensing Objectives.*
- 13. The Sub-Committee heard from Mr Edwards a resident living nearby who was concerned that late night opening beyond the current closing time of 2300hours would result in an increase in noise and disturbance. Mr Edwards advised that he had made a number of complaints to the Supermarket regarding noise from late night deliveries. Ms Nicholls agreed to speak to Mr Edwards about his concerns outside of the Hearing. The Sub-Committee came to the view that there had been incidences of noise disturbance and this was a concern given the proximity of residential properties and the hospital. The Sub-Committee welcomed the acceptance by the Applicant that this needed to be addressed.*
- 14. Cllr Birch a Totnes Councillor advised the Sub-Committee of anti social behaviour occurring in Totnes because of excessive alcohol, the existence of a Public Spaces Protection Order (PSPO) adjacent to the Supermarket specifically in relation to alcohol, and spoke on behalf of the Street Pastors of Totnes who have experience of working with people in Totnes under the influence of alcohol. The Sub-Committee noted both the comments in relation to the existence of the Order from Mr Taylor but the accessibility of alcohol was at odds with the purpose of the PSPO. Councillor Birch referred*

*to the representations made by Mr and Mrs Waterson, Ms Whitty and Ms Curtis.*

- 15. The Sub-Committee considered the written representations received from residents, Councillors, those working with or responsible for children and organisations involved in addressing directly, problems related to the misuse of alcohol in Totnes and youths already congregating outside the Supermarket. The Sub-Committee also took account of the oral representations made by Ms Luscombe, Ms Shepherd, Ms Curtis and Ms DeValero and Cllr Hodgson in so far as the comments were relevant to the application for the Supermarket.*
- 16. It was a matter for the Sub-Committee to determine what weight to give to the representations of third parties and the absence of a representation from the Responsible Authorities did not mean that the representations received should be afforded no weight. The Sub-Committee noted that the Designated Premises Supervisor, listed on the application was not present at the Hearing. The Applicant relied on the absence of representations of Responsible Authorities to conclude that there was no evidence that the grant of the variation was likely to affect the promotion of the Licensing Objectives.*
- 17. The Sub-Committee concluded that an extension to the licence to permit the sale of late night refreshment should be granted but a condition was necessary to ensure that sales did not take place outside in order to prevent a noise disturbance and a public nuisance in particular to local residents. An additional condition is to be included on the existing Premises Licence and details are provided in the Schedule below. However the Sub-Committee concluded at this time that it was not necessary to impose a condition relating to deliveries given the assurances provided by the Applicant. If this matter was not satisfactorily resolved then a request to review the licence would be possible, alternatively a complaint made to Environmental Health Officers.*
- 18. However the Sub-Committee, having listened carefully to all the representations, concluded that it is more probable than not that the variation to permit the unrestricted sale of alcohol would result in a failure to meet Licensing Objectives relating to prevention of Crime and Disorder, prevention of Public Nuisance and the Protection of Children from Harm. The Sub-Committee appreciated that the existing licence and the decision in respect of late night refreshments meant that the Supermarket could be open for a 24 hour period. It appreciated that given their decision the Applicant may need to take steps to limit the access to those parts of the store*

*displaying alcohol but it considered that it should not be prescriptive as to how this may be achieved.*

19. *Having considered all the representations received, the Sub Committee considered that there was evidence of problems emanating from the misuse of alcohol within Totnes already and an increase in hours for the sale of alcohol to 24 hours from the premises is likely to have an effect on the promotion of the Licensing Objectives to prevent Crime and Disorder, to protect Children from Harm and to prevent Public Nuisance. It would not be appropriate to grant the application to allow for the sale of alcohol to 24 hours and that part of the Application is **REFUSED**. This decision is made in accordance with section 6.4 and 6.8 of the Council's Statement of Licensing Policy.*

The Meeting concluded at 4.00 pm

**Signed by:**

**Chairman**

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