

LICENSING SUB COMMITTEE – 25 OCTOBER 2019

APPLICATION TO VARY A PREMISES LICENCE

WINDMILL SERVICE STATION, SALISBURY ROAD, BLASHFORD.

1. INTRODUCTION

- 1.1 The purpose of the report is to provide Members with information at the hearing to determine an application to vary a premises licence under section 34 of the Licensing Act 2003. The premises is Windmill Service Station, Salisbury Road, Blashford, Ringwood, BH24 3PB.

2. BACKGROUND INFORMATION

- 2.1 The Windmill Service Station is situated on the A338 (Salisbury Road), a busy main road near Ringwood which links Fordingbridge, Ringwood and Salisbury. The service station is positioned next to a large business park and a small number of residential properties.
- 2.2 The premises licence holder is Peregrine Retail Limited and the shop and facilities are operated under the Budgens brand. The shop services passing trade, residents and customers from the Headland Business Park and there is also a car wash and fuel pumps. A location plan of the premises is provided in **Appendix 1**.
- 2.3 In 1994 this site was the subject of a planning appeal hearing and at the time, no restrictions were placed on the operating hours for the site. This has been confirmed by a planning officer. This email together with the appeal decision is provided in **Appendix 2**. Whilst Planning and the Licensing Act 2003 should be considered separately, planning information is being provided for clarity.

The licensing history of this site is as follows:

- 2.4 In 2009, the operator made an application for a premises licence to allow;
- Supply of alcohol (off the premises) from 08:00hrs to 23:00hrs
 - Late Night Refreshment (hot food or drink) from 23:00 to 05:00 hrs and
 - Opening hours from 00:00hrs to 00:00hrs
- 2.5 Objections were received and on 18 June 2009 a Licensing Sub-Committee determined the application and granted a premises licence (no. 1466) for the following:
- Sale of alcohol from 08:00hrs to 23:00hrs
 - Late Night Refreshment was not permitted.
 - Opening hours from 06:00hrs to 23:00hrs.
- 2.6 On 3 December 2010, whilst the site was under development, a new licence (no. 1502) was applied for and granted. This covered the temporary changes to the site.
- 2.7 The licence permitted the sale of alcohol from 08:00hrs to 23:00hrs and opening hours of 06:00hrs to 23:00hrs.
- 2.8 Following the development of the site and the retail unit, the licence number 1502 was surrendered.

2.9 The site currently holds a premises licence issued under the Licensing Act 2003 (number 1503) also dated 3 December 2010 which permits the following licensable activities:

- Sale of alcohol (off the premises) from 08:00hrs to 23:00hrs (Monday to Sunday)
- Opening hours 08:00hrs to 23:00hrs

(There were no representations against this application.)

2.10 However, the premises are permitted to operate outside of these hours where no licensable activities are taking place i.e. the sale of alcohol.

2.11 The current premises licence with conditions is provided in **Appendix 3**.

2.12 In May 2019, the Licensing Authority received an application for a Minor Variation to the licence. The Minor Variation process allows for a simplified procedure to make changes to a licence if the changes will not have a detrimental effect on the licensing objectives. There is a shortened time frame for advertising the application, parties are not required to be consulted and there is no requirement for a hearing.

2.13 The Minor Variation sought to:

- Add Late Night Refreshment from 23:00 to 05:00 and
- Amend the opening hours to from 00:00 hours to 00:00 hours.

2.14 Following representations received from neighbours, the New Forest District Council, as the Licensing Authority, rejected the application to add Late Night Refreshment and alter the opening hours on the licence. However, the premises may still open over the 24 hour period if no licensable activities are taking place.

2.15 All residents who contacted the Licensing Authority during this process were informed that the Minor Variation application had been rejected. Further clarification was provided on the fact that 24 hour operating is permitted where no licensable activities are taking place. This does not have to be granted by the Licensing Authority.

2.16 Photographs of the property, front and rear are provided for Members in **Appendix 4**. Photographs also reference the properties from which representations were received and they are indicated on the location plan in **Appendix 1**.

2.17 The photographs are described as follows:

- Photo 1- Customer parking for Budgens
- Photo 2- Front of shop and A338
- Photo 3- Front corner of Budgens and residential properties
- Photo 4- Headland business park entrance and service station
- Photo 5- Nearest residential properties
- Photo 6- Residential properties
- Photo 7- Land opposite Windmill Services
- Photo 8- Forecourt and carwash
- Photo 9- Rear exit of Windmill Services

3. THE APPLICATION

3.1 On 30 August 2019, New Forest District Council received a variation application from Winckworth Sherwood LLP on behalf of the Premises Licence Holder, Peregrine Retail Limited. The application is attached in **Appendix 5** (blank pages removed).

- 3.2 The variation application seeks the following:
- To extend the sale of alcohol to take place 24 hours per day;
 - To add the provision of late-night refreshment between 23:00hrs and 05:00hrs daily;
 - To amend the opening hours from 00:00hrs to 00:00hrs;
 - To remove any conditions listed under Annex 2 on the current premises licence;
 - To replace the current Annex 2 conditions with those listed in box b to e of Section 16 of the application;
 - To update the Premises Licence Holder's address.
- 3.3 This is a full variation application and, therefore, consultation by way of public notices and notification to the Responsible Authorities must take place during a 28 day period. The application has been correctly advertised both on the premises and in the local newspaper, thereby fully satisfying the requirements under the Licensing Act 2003

4. REQUIREMENTS FOR A HEARING

- 4.1 The Licensing Authority must hold a hearing to determine the application where relevant representations are made about the likely effect of the grant of the application to vary the licence on the promotion of the licensing objectives. These objectives being:
- 1) The prevention of Crime and Disorder;
 - 2) Public safety;
 - 3) The prevention of public nuisance;
 - 4) The protection of children from harm.
- 4.2 Members are referred to statutory guidance issued by the Home Office under section 182 of the Licensing Act 2003 dated April 2018, in particular the sections on the licensing objectives and variations.
- <https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>
- 4.3 In determining the application, the Licensing Sub-Committee must give appropriate weight to:
- 1) The steps that are appropriate to promote the licensing objectives;
 - 2) The relevant representations presented by all the parties;
 - 3) Home Office guidance;
 - 4) The Council's own Statement of Licensing Policy.

5. REPRESENTATIONS RECEIVED

- 5.1 During the representation period the Licensing Authority received four representations against the application. These are provided in **Appendix 6**.
- 5.2 All representations were received from nearby residents and relate to issues that this application, if granted, could impact on. However, some issues referred to in the representations fall outside the scope of the Act (i.e. noise from a gardener and deliveries etc).

- 5.3 Some of the concerns relating to noise and lighting may occur even when the licensable activity is not taking place. Complaints relating to these issues are already being investigated by the Council's Environmental Protection Team and are separate to the scope of this application.
- 5.4 Two of the representations make reference to section 176 of the Licensing Act 2003 which provides that no premises licence has the effect to authorise the sale by retail or supply of alcohol on or from 'premises used primarily as a garage or which form part of premises which are primarily so used'. However, this premises is already licensed to sell alcohol and this application seeks to vary that licence.
- 5.5 There have been no representations from any of the Responsible Authorities. These include the Police, Fire, Planning, Health and Safety, Child Protection, Environmental Health, Trading Standards and The Home Office.

6. LEGAL IMPLICATIONS

- 6.1 This hearing is governed by the Licensing Act 2003 (Hearings) Regulations 2005. These provide that hearings should be held in public unless the Licensing Authority considers that the public interest in excluding the public outweighs this.
- 6.2 The Applicant and those parties making representations have been invited to this hearing and have been provided with this report and the procedures to be followed at the hearing.
- 6.3 The Applicant and those who have made relevant representations are entitled to address the Sub-Committee and to ask questions of the other party as set out in the procedure.

7. RIGHT OF APPEAL

- 7.1 It should be noted that the Applicant and those who have made relevant representations may appeal the decision made by the Licensing Sub-Committee to the Magistrates' Court. The appeal must be lodged with the Magistrates Court within 21 days of the notification of the decision.
- 7.2 In the event of an appeal being lodged, the decision made by the Licensing Sub Committee remains valid until any appeal is heard and any decision made by the Magistrates' Court.

8. CONCLUSION

- 8.1 The Licensing Sub-Committee must, having regard to the application and any relevant representations take such steps as it considers appropriate for the promotion of the licensing objectives. Members may:
- 1) Modify the conditions of the licence or
 - 2) Reject the whole or part of the application.

(and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added).

9. RECOMMENDATION

9.1 That the Licensing Sub-Committee determines the application to vary the premises licence.

10. APPENDICES

Appendix 1 Location plan
Appendix 2 Planning documents
Appendix 3 Current premises licence
Appendix 4 Photographs of the site and vicinity
Appendix 5 Application form
Appendix 6 Representations

Further information:

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