

## LICENSING & PUBLIC SPACE PROTECTION ORDER (PSPO) SUB COMMITTEE

TUESDAY, 20 APRIL 2021

PRESENT: Councillors John Bowden, Jon Davey and David Hilton (Chairman)

Also in attendance: Lisa Joanne Gilligan (legal representative of the Applicant), Jack Forrester (Operations Director, Applicant) and Pat Morrish (Objector, resident)

Officers: Craig Hawkings, Fatima Rehman, Shilpa Manek and Rachel Lucas

### APPOINTMENT OF CHAIRMAN

**RESOLVED UNANIMOUSLY: That Councillor Hilton be Chairman. This was proposed by Councillor Davey and seconded by Councillor Bowden.**

### APOLOGIES FOR ABSENCE

None.

### DECLARATIONS OF INTEREST

Although no formal declarations of interest were declared, it was noted that Councillor Davey worked for Tesco and had objected to the planning application for ALDI. Councillors Davey and Bowden had spoken to the objector prior to the meeting, and Councillors Bowden and Hilton were Members of the Royal Borough Development Management Panel at the time of the approval of ALDI's planning application. All Members came to the Sub Committee with an open mind.

### PROCEDURES FOR SUB COMMITTEE

The Clerk went through the procedures for the Sub Committee.

### CONSIDERATION OF APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003

The reporting officer, Craig Hawkings, Licensing Enforcement Officer, introduced the report.

The meeting of a Licensing Sub Committee was convened to hear an application for a new premise located within the Royal Borough of Windsor & Maidenhead. In line with Licensing Act 2003 S18 (3)(a) when relevant representations are made against an application, a hearing must be held to consider them. A relevant representation made against an application for a new premises licence must relate to at least one of the four licensing objectives set out in the Licensing Act 2003. These are 'The Prevention of Crime and Disorder', 'Public Safety', 'The Prevention of Public Nuisance', and 'The Protection of Children from Harm'.

The purpose of this hearing was for the Sub Committee to hear the application, receive written and oral representations from other parties and then to make a decision in respect of the application.

The Applicant was Lisa Joanne Gilligan, of Dedworth Road, Windsor, SL4 4LH.

The application was to:

1. To Licence a supermarket selling food, alcohol, toiletries, clothing, hardware and electrical items. The premises dedicated car parking.

A summary of the application is as follows:

The standard opening hours of the premises:

- 06:00 until Midnight - Monday to Sunday

To permit the sale by retail of alcohol for consumption OFF the premises:

- 06:00 until Midnight - Monday to Sunday

The Designated Premises Supervisor (DPS) would be Lisa Joanne Gilligan.

The application did not receive representations from the responsible authorities, including Environmental Health, Royal Borough Fire and Rescue Service, Planning Officer, Local Safeguarding Children's Board, Public Health, Trading Standard, Thames Valley Police and RBWM Licensing. Extra conditions had been proposed by Trading Standards and Thames Valley Police in addition to the proposed conditions received within the application. The applicant had agreed to all the conditions proposed by both responsible authorities. There had been 7 individual representations from other persons that were relevant as they related to one or more of the four licensing objectives.

The Licensing Panel Sub Committee was obliged to determine this application with a view to promoting the four licensing objectives which are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance
- The protection of children from harm.

In making its decision, the Sub Committee was also obliged to have regard to national guidance and the Council's own Licensing Policy. The Sub Committee must have regard to all of the representations, take such step or steps as it considers appropriate for the promotion of the licensing objectives. The steps were:

- (a) Reject the application;
  - (b) Refuse to specify a person in the licence as the premise's supervisor;
- (\*Note – not all of these will be relevant to this particular application)
- (c) Grant the application but modify the activities and/or the hours and/or the conditions of the licence;
  - (d) Grant the application. Where conditions are attached to a licence then reasons for those conditions must be given.

The Sub Committee were reminded that any party to the hearing may appeal against the decision of the Sub Committee to the Magistrates' Court within 21 days of the notification of the determination.

**Questions to the Reporting Officer**

The Chairman asked what the licensing hours were of the nearby Tesco, and Craig Hawkings said the timings were as follows:

The standard opening hours of the premises:

- 08:00 until 23:00 - Monday to Saturday
- 10:00 until 21:30 - Sunday

To permit the sale by retail of alcohol for consumption off the premises:

- 09:00 until 20:00 - Monday to Friday
- 09:00 until 21:00 - Saturday
- 10:00 until 16:00 - Sunday

The Chairman addressed the concerns raised in the letters of objections within the report regarding differing licensing hours and opening hours and asked for clarification. The Reporting Officer said it was not uncommon to have differing hours, as it was a means to future-proof the license, should there be a relaxation. However, the restrictions placed by planning hours and Sunday trading hours were still to be abided by. The guidance issued under section 182 of the Licensing Act stated that the hours were not required to be duplicated that were already in other legislations.

Councillor Davey asked why the opening hours for ALDI on Sunday were 7 hours, when the Sunday trading law restricted this to 6 hours. The Reporting Officer said this was to future-proof the license in case there was a relaxation in legislation, which would avert the cost of applying for a variation in the license.

## **Applicants Case**

Lisa Gilligan, legal representative for ALDI, addressed Councillor Davey's query and said ALDI had no intentions to trade outside the permitted hours in relation to Sunday trading, licensing, or planning hours. Whichever of the three had the shortest hours would prevail. Each legislation had their own enforcement policy, and therefore there was not a need to mirror the timings.

Lisa Gilligan said ALDI had been operating in the UK since 1990, with standard hours of 08:00 until 23:00; however, this was for future-proofing measures, and stores did not open at 08:00. Ten years ago, applications were made for 07:00 until 23:00, regardless of Sunday trading and planning hours to future-proof the business. A standard nationwide licensing application was made, without consideration of the planning application hours because the hours did not need to match.

In January 2021, a central decision was made to extend outstanding application hours to 06:00 until midnight, and currently, ALDI stores did not remain open till midnight. Since 2021, the applications that were submitted with the new timings were either granted or in consultation, and none were refused due to lack of alignment with licensing or Sunday trading hours. The prompt for extending the trading hours was due to COVID-19, where the business understood the commercial and public need to be as flexible as possible. ALDI extended its hours during Christmas and for key workers, which the business was able to implement immediately at some stores and had proven popular with customers. The longer trading hours allowed maximum future flexibility, was not uncommon, and other supermarkets had 24-hour applications for future proofing.

Lisa Gilligan said the nearby Tesco's licencing activity hours fell outside of the framework hours, which was not unusual, and the licensing application had no

reflection on the planning application. The boroughs licensing policy indicated that the Thames Valley Police (TVP) was the main source of advice for crime and disorder, and neither planning nor TVP objected to the application.

Many of the objectors reasonings detailed in the report were regarding the misalignment of the planning and licensing hours; however, the borough's policy, guidance under the Licensing Act 2003 stated it was lawful for the hours to differ.

It was requested to look at the licensing application on its merits and in alignment with the licensing objectives. ALDI was a responsible operator, with over 900 stores nationwide, almost 40% of those had longer licensing hours permitted on their premise's licenses than their planning permission permit. ALDI had never been prosecuted for breaching planning permission hours, or any offence under the Licensing Act 2003.

Lisa Gilligan highlighted that she was the temporary DBS for ease before a Store Manager was appointed prior to the opening of the store.

### **Questions to the Applicant by Members**

Councillor Davey said Challenge 25 was an initiative to prevent youths from purchasing alcoholic beverages, and asked how ALDI applied Challenge 25, and the repercussions if it was not complied to. Jack Forrester said ALDI took Challenge 25 seriously with monthly internal audits and quarterly external audits to ensure Challenge 25 was being adhered to. Disciplinary actions were taken if Challenge 25 was not abided to, though not every incidence led to repercussions.

Councillor Davey asked for residents to be given the reassurance that individuals would not be drinking alcohol on the streets, and Jack Forrester said staff were incentivised to be conservative when following the Challenge 25 principles, to ensure they were not selling alcohol to underage customers.

The Chairman asked if ALDI had prosecutions of selling alcohol to underage customers or had failed to follow Challenge 25, and Lisa Gilligan said that ALDI had no convictions in relation to underage sales of alcohol. The Chairman asked if ALDI was prosecuted but not convicted, and Lisa Gilligan said there was one prosecution in Wales in 2008 when electronic till prompts were not implemented; however, all stores now had till prompts as a further precaution for till staff.

Councillor Bowden asked if CCTV inside the store and use of security officers would be implemented to watch individuals in the store. Lisa Gilligan said CCTV would be implemented, and Jack Forrester said it was not ascertained at this stage if security would be required, as this was for staff protection purposes, but it was not uncommon to have security. The Chairman asked if CCTV was focussed on prevention of theft or sale of alcohol, and Lisa Gilligan said CCTV was implemented for the safety of public and staff, theft and covered the entire store. Whilst CCTV was a key preventor of crime and disorder, its purpose was not limited to theft.

Pat Morrish asked why 40% of ALDI stores did not have licensing hours outside of their opening hours, and Lisa Gilligan clarified that 40% of the stores planning and licensing hours did not align because planning permissions were not reviewed when submitting a licensing application. Licensing applications were made in uniformity

nationally and conditions were then tailored to the responsible authorities' requirements.

Pat Morrish asked if ALDI in Dedworth had applied for longer licensing hours as they were going to apply for longer opening hours as a routine. Lisa Gilligan said she was unaware of any intention to do so, and if ALDI were to apply for longer opening hours, the decision would go under planning's scrutiny, as they were two distinct regimes.

Pat Morrish asked why all ALDI stores had not applied for longer hours, and Lisa Gilligan said ALDI was now applying for longer hours, regardless of planning. 06:00 until midnight was now ALDI's standard position, with up to 14 other applications that had been applied for since 2021 with the same timings.

The Chairman asked the success rate of ALDI gaining licensing hours from 06:00 until midnight, and Lisa Gilligan said there have been no objections to any other applications.

### **Objectors Cases**

Pat Morrish said seven other residents and associations put forward their objections on similar grounds regarding the opening hours of the premises of 06:00 until midnight. This was not standard opening hours, which was 08:00 until midnight Monday to Saturday and 10:00 until 17:00 on Sunday; an hour over legal Sunday trading hours.

Pat Morrish considered ALDI as an off license, with off license hours being 09:00 until 23:00. She had not seen a response from ALDI for intention to extend the opening hours once the store was open, and the opening hours were already excessive and more than the local Tesco's opening hours. If excess licencing hours were granted, a precedent would be created, and it would be likely that the local Tesco would apply for similar hours.

Pat Morrish said there had been no attempt to provide a security fence between her property and ALDI, therefore anyone could easily get from ALDI's car park and onto her property, with a possibility of bringing alcohol on her property. One of the licensing objectives was the protection of vulnerable children, and she felt patients on a detox programme at the Cardinal Clinic were vulnerable and would have greater access to alcohol, as Tesco was at a further distance and had less trading hours.

Pat Morrish said the sale of alcohol could be considered as anti-social and additional licensing hours. Crime statistics from TVP should from 2020 showed that anti-social behaviour (ASB) represented 16% of crime in West Windsor, with violent crime representing 33% of recorded crimes. The availability of low-priced liquor from 06:00 until midnight could fuel those with alcohol and substance challenges and could lead to increased crime and ASB in the residential area. It would reinforce the problems associated with late-night drinking and impact the spread of domestic abuse. Pat Morrish proposed a modification to the conditions of the license or hours.

### **Questions to the Objector by Members**

Pat Morrish and the Chairman asked Craig Hawkings the cost of applying for a license extension, and the Reporting Officer said a cost of approximately £315 would be issued, depending on the rate value. This would be subject to a 28-day consultation

and then the hearing process would be triggered. The Chairman said the cost of preparing, attending, and having solicitors would be greater than the application for the license extension.

Councillor Davey said he understood the Objectors unique position of being a neighbour and clinic that dealt with people who experienced patients overcoming alcohol misuse; however, there were no extreme negative situations present. ALDI was doing what it could to manage concerns by installing CCTV and applying Challenge 25. He asked if ALDI could apply good practice from the Cardinal Clinic and Pat Morrish said a lot could be learnt from her establishment and would be happy if contact was made by ALDI.

Pat Morrish said there were no means to identify a clinic patient and was concerned about the security of ALDI's premise, as patients or passers-by may get into the store after hours and cause damage. There was not a security fence other than a four-metre-tall acoustic fence and welcomed ALDI to be in touch regarding this. Pat Morrish asked if ALDI planned to lock the car park at night, and the Chairman said the car park was not part of the licencing review. The Chairman suggested ALDI to liaise with Pat Morrish regarding these concerns. Jack Forrester said he was happy to get in touch with Pat Morrish offline and help the Cardinal Clinic.

The Chairman said ALDI wished to be good neighbours and the commitment made by Jack Forrester was helpful.

### **Questions to the Objectors by Applicants**

Lisa Gilligan asked if discussions with the licensing team regarding the procedure in licensing were had, and Pat Morrish confirmed she had not.

The Chairman said in the event of activities which were deemed to be associated with alcohol sold at ALDI store did occur, objections could be made, and a hearing would be arranged on the continuation of the license. The decision made was not irrevocable.

Lisa Gilligan summarised that the opening hours of the premises was restricted by planning and Sunday trading hours, whichever was the shorter operating hours. The application was to allow maximum operational flexibility in case of the relaxation of Sunday trading and planning. There were no objections received from TVP in relation to crime and disorder. A review was at resident's disposal if they felt licensing conditions were breached, though ALDI was committed to being a good neighbour and had experience of operating in challenging locations. She asked the Sub Committee to grant the license, as other legislations restricted opening hours and the conditions in the report ensured responsible promotion of the licensing objectives.

Craig Hawkings restated the options open to the Members of the Sub Committee.

The Chairman said the Sub Committee would retire to make a decision, and an email would be sent to the applicant in 5 working days. The Objector would also be notified of the decision. The Chairman thanked all attendees of the meeting.

### **Decision**

The Sub-Committee considered the written submissions provided by the applicant, Officers of the Council and Objectors. The Panel also heard oral evidence provided from the following:

- Craig Hawkings (Reporting Officer at the Royal Borough of Windsor & Maidenhead)
- Lisa Gilligan (Applicant)
- Pat Morrish (Objector)

After careful consideration of all the evidence, the Sub-Committee unanimously agreed to allow the application as sought.

In making their decision, the Sub-Committee had regard to its duty to promote the four licensing objectives; the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm.

The Sub Committee were mindful of the concerns raised by the objectors, both by way of written submissions and that which was raised at the meeting.

In particular, the Sub Committee noted objectors' concerns of the hours sought exceeding that of the framework hours laid out within the statement of Licensing Policy, and further that the hours sought exceeded the proposed opening hours.

However, the Sub Committee took regard to the guidance issued under Section 182 of the Licensing Act 2003, paragraphs 1.16 and 10.15. The Sub Committee also took into account your reasoning to apply for extended hours for future flexibility in case of relaxation of legislation and noted that you had no intentions of trading outside the permitted hours as prescribed by both the planning conditions and Sunday Trading legislation.

The Sub Committee was understanding towards the concerns raised by Ms Morrish for her patients; however, they were also mindful that such concerns were not, in isolation, matters which would offend the licensing objectives. The Sub Committee were also satisfied with your agreement to be good neighbours and work with the Cardinal Clinic, which was welcomed by the Objector.

The Sub Committee also took into consideration the absence of objections from Environmental Health, Royal Borough Fire and Rescue Service, Planning Officer, Local Safeguarding Children's Board, Public Health, Trading Standard, Thames Valley Police and RBWM Licensing.

Therefore, the Sub Committee were of the view that there was no evidence to raise concern of any negative impact on the licensing objectives.

The meeting, which began at 10.00 am, finished at 11.15 am

CHAIRMAN.....

DATE.....