

**MINUTES OF A MEETING OF THE
LICENSING SUB-COMMITTEE held at
Surrey Heath House, Camberley on 15
August 2013**

+ Cllr Glyn Carpenter
+ Cllr Bill Chapman

+ Cllr Lexie Kemp

+ Present

In attendance: Cllr Valerie White (as reserve)

Legal Adviser to the Sub-
Committee

Mrs Laura James (Legal Representative for Surrey
Heath Borough Council as Licensing Authority)

Democratic Services Officer

Mr Andrew Crawford

Surrey Heath Borough Council
as Licensing Authority

Mr Derek Seekings (Licensing Officer)

Applicant – WM Morrison's
Supermarkets Ltd

Ms Kelly Nicholls – WM Morrison Supermarkets Ltd
Ms Claire Johnson – Gosschalks Solicitors

Responsible Authorities

Nil

03/LS Election of Chairman

**RESOLVED, that Councillor Bill Chapman be elected as Chairman for
the meeting.**

PART I (public)

04/LS WM Morrison Supermarkets Ltd – 4 – 6 Wharf Road, Frimley Green.

The Sub-Committee considered a new application for a new Premises Licence relating to 2-4 Wharf Road, Frimley Green.

The Licensing Officer presented his report to the Sub-Committee and notified representatives of the parties who had a right to speak at the meeting. He referred Members to the Licensing Objectives and noted that relevant objections had been submitted. He noted that two written representations had been submitted, but that neither of the other persons was attending the meeting. A further e-mail from one of the other persons had been submitted after the agenda had been published.

The Legal Advisor reminded Members that any material which had not been circulated in advance to all parties could only be considered at the meeting if all parties present agreed. With the agreement of all parties, the e-mail from a Mr Painter, dated 14 August 2013 and timed at 15.03, was circulated to all and considered by the Sub-Committee.

The Licensing Officer reported that Surrey Police had submitted an objection to the application, but that they had subsequently been satisfied with the lowering of the point at which sales of alcohol would cease, from Midnight to 11 p.m. and the inclusion of the following five additional conditions:

1. An electronic refusals system will be in place;
2. Appropriate digital CCTV equipment and a sufficient number of cameras shall be installed and maintained at the premises to record colour images of an evidential quality. The areas covered by the cameras will cover all areas within the premises that are open to the public. A camera will be positioned to obtain images of persons entering the building by the main entrances. These images shall be of evidential quality;
3. The CCTV system will be in operation and recording whenever the premises are open to the public;
4. Recordings made on the CCTV system shall be retained for a period of at least 30 days of recording; and
5. Notices stating that CCTV is in operation shall be displayed throughout the premises where the public have access and the notices shall be at least A4 size.

The Licensing Officer noted that in respect of the late submission from Mr Painter, whilst it indicated that the One Stop shop closed at 10 p.m., both the shop and the nearby garage, which also sold alcohol, had licenses that permitted sales until 11 p.m.

The Licensing Officer introduced Ms Kelly Nicholls of WM Morrison Supermarkets Ltd and Ms Claire Johnson of Gosschalks Solicitors, representing WM Morrison.

Ms Johnson reported that Ms Nicholls was the Licensing Manager for the whole of the Morrison's estate, currently amounting to in excess of 500 shops across the UK. The proposal was for an M Shop which would be one of Morrison's convenience stores. M stores predominantly sold fresh rather than pre-packaged goods and goods were priced at the same as major stores. She confirmed that amended hours of 6.00 a.m. to 11.00 p.m. were being sought, after discussions with Surrey Police.

All M stores had full CCTV and applied the Challenge 25 policy. An independent company was commissioned to do checks of all stores and if staff from any store served age restricted goods to under-age shoppers, all staff at the store would be subject to re-training.

Alcohol sales would account for only 15% of sales at the proposed M Store. Five store managers would be employed, so that a manager would be on site during all trading hours.

Of the two objections, Ms Johnson noted that one referred to planning matters and the other was effectively inappropriate speculation. The Store size was less than 3,000 feet² and as such, Sunday trading laws would not apply if a licence was granted.

In discussion with the Sub-Committee and the Sub-Committee's Legal Advisor, Ms Johnson agreed to the following minor changes to the five conditions agreed with Surrey Police, subsequent to submission of the application:

- (i) The electronic refusal system to include date, time, reason for refusal and if available the name of the person, with this data retained for twelve months;
- (ii) In condition 2, relating to CCTV, delete the first word – 'Appropriate': and
- (iii) In condition 4, CCTV records to be retained, un-edited on site for 30 days from the recording.

After being addressed by the Licensing Officer and applicants, the Sub-Committee retired to consider its decision and was accompanied by Mrs James who gave Members legal advice.

Upon return, the Chairman noted that it had been explained to all parties present, by the legal advisor, that the Licensing Act encouraged the Sub-Committee to view its powers and responsibilities in the light of the community as a whole. The regime under the Act had a light touch approach to regulation and the Sub-Committee carried out functions with a view to promoting the licensing objectives and having regard to the statutory guidance and to the statement of licensing policy.

He stated that, if the sub-committee was minded to attach any conditions to a proposed Licence, these must be appropriate to promote one or more of the licensing objectives as set out in statutory guidance.

The Sub-Committee had noted and considered carefully the concerns of the two objectors. In the light of the legal advice received regarding the weight to be attached to each of them, it considered in the absence of any firm evidence of nuisance likely to occur, the premises should be allowed to trade. If problems occurred it was considered that this might be dealt with informally with the applicant and if it proved necessary, progress to a review.

The Sub-Committee had regard as to whether conditions were appropriate in accordance with the guidance and the licensing policy and noted the changes agreed by the applicants in consultation with Surrey Police, plus the amendments agreed by the applicants at the meeting.

The Sub-Committee therefore agreed to grant the Licence as requested subject to conditions indicated in the Decision Notice, below.

RESOLVED, that the Premises Licence for 2 – 4 Wharf Road, Frimley Green, be granted for the hours of 0600 to 2300, subject to the conditions attached in the Decision Notice at Annex A.

CHAIRMAN

Note 1: The hearing commenced at 10.00. The Sub-Committee retired at 11.00 to reconvene at 11.30 to give its decision. The hearing concluded at Noon.

LICENSING SUB-COMMITTEE – 15 August 2013**The Application**

This is an application by WM Morrison Supermarkets plc (Morrison's) for a new premises licence at 2-4 Wharf Road, Frimley Green, Surrey. Representations have been received from "any other persons", namely two local residents.

At the hearing of the application in attendance were:

Mr Derek Seekings
(Licensing Officer)
Mr A Crawford
(Sub- committee clerk)
Mrs L James
(Legal Adviser)
Ms K Nicholls
Ms C Johnson, Gosschalks, Solicitors (For Applicant)

Mr Seekings confirmed the agenda was incorrect in that there were no representations from Environmental Health in paragraph 2.4.4 of his report at agenda item 3.

Evidence before the Sub-Committee

Representations were made by Ms Johnson on behalf of the applicant that the email of Mr Painter of 14 August 2013 had only been produced to her at the hearing. Whilst Ms Johnson stated she did not have to accept this, she believed that the representations merely amplified the issues raised in his original representation and she therefore consented to this information being included at the hearing.

Our legal adviser confirmed the position as set out in the Licensing Act 2003 (Hearings) Regulations 2005 in regulation 18 and we then read that email.

Our legal adviser further confirmed that the relevant statutory guidance was that version which came into force on 27 June and paragraph 1.6 expressly referred to applications which had been received by the authority after that date being processed in accordance with that revised guidance. The application was received on 28 June. Ms Johnson also accepted that position.

Ms Johnson explained that Morrison's were opening a large number of smaller stores in the South, similar to Tesco Metro stores, but Morrison's M stores sold largely fresh foods and 15% of the floor area would relate to alcohol sales. The prices would be the same as in the larger stores. She said that in consultation with Surrey Police Morrison's had agreed to reduce their licensing hours contrary to their standard hours adopted in many of their stores of 6am to midnight, to 6am to 23.00 hours. In the light of that and agreeing a number of conditions, the police had withdrawn their objection to this application.

She explained that the company traded in some highly populated and challenging areas and also in very close proximity to residential areas. Morrison's regarded itself as a good neighbour. The company also had considerable experience in operating licensed premises and had over 500 stores to date and there had been no reviews or prosecutions of Morrison's to date. Ms Johnson felt their policies and procedures had worked well to promote the licensing objectives.

In respect of the Challenge 25 policy, Ms Johnson explained it is company policy that if a store does not pass an independent assessment relating to under age sales, the entire staff have to undergo retraining. She added there would always be a manager and someone to operate the CCTV equipment at all times at this site.

Ms Johnson also referred to the presence of other licensed premises in the vicinity, namely One Stop which she had found in the licensing register and noted those premises had a terminal hour of 23.00 hours. It appeared they chose to close at 22.00 hours and this was referred to in Mr Painter's email. Ms Johnson pointed out One Stop could lawfully trade until 23.00 hours as could the local garage which is also licensed for the sale of alcohol and the same hours were sought for Morrisons.

In respect of the representations made, Ms Johnson felt one related to planning issues. She did mention one issue with a Morrisons delivery lorry elsewhere, which had been resolved informally but this pointed out this did not relate to licensable activities. The representations of Mr Painter she felt were inappropriate speculation and pointed to the strict procedures Morrisons operated after pubs closed. She stated there was no evidence of public nuisance and referred to the Thwaites case in support. She said if issues did arise then a review would be possible based upon evidence, but there was no evidence to suggest a further restriction of hours by condition would be appropriate today.

Ms Johnson confirmed that the Sunday trading hours did not apply as the store did not exceed 3,000 square feet.

In exchanges with our legal adviser Ms Johnson was in agreement that two of the conditions proposed by the police could be amended in the manner suggested by our legal adviser and refined by Ms Johnson further so as to ensure enforceability and in line with what was Morrisons' usual practice. These were conditions numbered 1, 2 and 4 in the email dated 2 July at page 20 of the agenda.

Ms Johnson also reminded us of the statutory guidance in relation to trading hours at paragraph 10.13.

The Decision

We note the concerns of Mr Gordon in his letter of 21 July 2013 but we accept these relate mainly to planning issues which we cannot consider in terms of the licensing objectives being promoted in this application. We are also mindful that any licence granted can be reviewed under the Act. We took into account the issues raised by Mr Painter in his letter of 19 July 2013 and email of 14 August 2013 which expands upon his original representation. We were advised that we should not take into account matters of public nuisance that might occur but are not supported with evidence in relation to these premises. We therefore weighed up the strength of the representations against the application and decided the premises should be permitted to trade in accordance with the hours proposed by the applicant. We also took into account paragraph 50 of the Statement of Licensing Policy and 10.13 of the statutory guidance in relation to the hours of trading.

In explaining the legal advice given to us when we considered our decision, we were reminded by our legal adviser that the Licensing Act encourages us to view our powers and responsibilities in the light of the community as a whole. The regime under the Act has a light touch approach to regulation and we carry out functions with a view to promoting the

licensing objectives and having regard to the statutory guidance and to the statement of licensing policy. We had regard to paragraph 10.13 of the guidance and whether conditions were appropriate in accordance with the guidance and licensing policy. We noted the conditions agreed by the applicant and in their operating schedule. We considered it is appropriate that the conditions agreed with the police be imposed as amended with the agreement of the applicant and their legal representative in exchanges with our legal adviser and which we believe are readily enforceable.

We conclude that having regard to all the evidence before us today that the premises licence should be granted and comprising the revised application made in relation to the hours of the licence. If nuisance, in particular, occurs the Licence may be reviewed under the Licensing Act and there are separate environmental health powers to assist in dealing with complaints.

We therefore grant the Licence to operate from 6.00 to 23.00 hours subject to the following conditions:

Conditions

We have had regard to whether conditions are appropriate in accordance with the guidance and the licensing policy, those offered by the applicants in their operating schedule and those agreed with the police. In summary we find it is appropriate that the following conditions be imposed on the licence which we believe are readily enforceable, as follows;

1. An electronic refusal system will be in place and an entry made showing the date, time and reason for any refusal. Such records shall be kept for twelve months.
2. Digital CCTV equipment and a sufficient number of cameras shall be installed and maintained at the premises to record colour images of evidential quality. The areas covered by the cameras will cover all areas of the premises that are open to the public. A camera will be positioned to obtain images of persons entering the building by the main entrances, These images shall be of evidential quality.
3. The CCTV cameras will be in operation and recording whenever the premises are open to the public.
4. Recordings made on the CCTV system shall be retained on the premises for a period of at least 30 days of recording and unedited.
5. Notices stating that CCTV is in operation shall be displayed throughout the premises where the public have access and the notices shall be at least A4 size.