

LICENSING SUB-COMMITTEE B – 20 NOVEMBER 2018

APPLICATION FOR A PREMISES LICENCE – BUDGENS, 1 CHERTSEY ROAD, WOKING

Executive Summary

This report considers an application for a Premises Licence (PL) for the above premises which varies its existing conditions.

Recommendations

The Committee is requested to:

RESOLVE THAT the report be considered and the application be determined accordingly.

The Sub-Committee has the authority to determine the above recommendation.

Background Papers:

Application form
Operating Schedule
Representations from Statutory Bodies and Interested Parties
Sustainability Impact Assessment
Equalities Impact Assessment

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1.0 Summary of Proposal

Application Type: New Premises Licence

Variation: No

Site Address: 1 Chertsey Road, Woking, Surrey, GU21 5AB

Applicant Mrs Eva Chowdhury of 8 Woodlands Court, Woking & Mr Muhammad Waseem Khan-Sherwani of 7 Essenden Road, South Croydon.

Application Ref: 18/00296/PREMIS

2.0 Description of Premises

2.1 The premises are to be a supermarket store selling alcohol for off-sales.

3.0 Details of Proposal and Operating Schedule

3.1 To licence the premises for the Sale of Alcohol (off sales only) Monday to Saturday 0700 to 2300 and Sunday 0800 to 2230.

3.2 Application is attached as Appendix 1.

4.0 Promotion of Licensing Objectives

4.1 The Sub-Committee is obliged to determine this application with a view to promoting the licensing objectives which are:

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

4.2 The operating schedule submitted in the application form, which is attached in Appendix 1, shows a list of proposed conditions that the applicant has put forward to describe the steps they intend to take to promote the four licensing objectives.

5.0 Relevant Representations

5.1 The following representations have been received in relation to the application:

Responsible Authorities

Surrey Police:

An **Objection** has been received on the grounds of the prevention of crime and disorder. The Objection Letter is attached as Appendix 2.

Surrey Fire and Rescue Service:

No objections have been received.

Environmental Health (WBC):

No objections have been received.

Planning Authority (WBC):

No objections have been received.

Social Services (SCC): No objections have been received.

Trading Standards: No objections have been received.

Public Health: No objections have been received.

Home Office Immigration Dept: No objections have been received.

Interested Parties

Members of Public: No objections have been received.

Other Persons: No objections have been received.

6.0 Policy Considerations

6.1 In making its decision, the Sub-Committee is obliged to have regard to national Guidance (Sections attached as Appendix 3) and the Council’s own Licensing Policy. The Sub-Committee must also have regard to all of the representations made and the evidence it hears.

6.2 The Licensing Officer considered the following policies taken from the ***‘Licensing Policy for Woking Borough’*** should be considered for this application.

6.0 Fundamental Principles

6.3 The Council recognises that public houses, nightclubs, restaurants, hotels, theatres, private members clubs, concert halls and cinemas all sell alcohol, serve food and provide entertainment, but with contrasting styles and characteristics. In considering applications, regard will be given to those differences and the differing impact these will have on the local community.

6.4 The Council can only attach conditions to licences where necessary to ensure the licensing objectives are served and may include conditions drawn from the Pool of Conditions relating to the licensing objectives contained in the guidance issued under the Act. When considering conditions, the Council will focus on the direct impact of the activities taking place at licensed premises on members of the public living, working or engaged in normal activity in the area concerned and those matters which are within the control of the applicant on the premises and in the vicinity of those premises. Whether or not incidents can be regarded as in the vicinity of licensed premises is a question of fact and will depend upon the particular circumstances of the case.

6.6 The Council acknowledges that licensing law is not the primary mechanism for the general control of anti-social behaviour by individuals once they are away from the premises and beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned.

7.0 The Licensing Objectives (Prevention of Crime and Disorder)

7.1 The Council will carry out its licensing functions with a view to promoting the prevention of crime and disorder and will seek to ensure that licensees take measures to regulate the behaviour of persons whilst on their premises, or in the immediate vicinity of the premises as they seek to enter or leave.

7.2 In addition to the requirement for the Council to promote this licensing objective, it also has a duty under Section 17 of the Crime and Disorder Act 1998 to exercise its functions with due regard to the likely effect of the exercise of those functions on, and to do all it reasonably can to prevent, crime and disorder in the Borough.

6.3 The Sub-Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives:

- i) Grant the application as made.
- ii) Modify the conditions of the licence, by altering, removing or adding to them.
- iii) Reject the whole or part of the application.

6.4 The Sub-Committee is asked to note that it may not modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so. It must actually be necessary in order to promote the licensing objectives.

6.5 To assist the Licensing Committee, the 'Pool of Conditions' is attached as Appendix 4 and excerpts from the National Guidance on Conditions are attached as Appendix 5.

7.0 The Cumulative Impact Zone

7.1 The Premises upon which the application is for is located within Woking Borough Councils Cumulative Impact Zone. The relevant section of Woking Borough Councils Licensing Policy relating to the Cumulative Impact Zone is attached as Appendix 6.

8.0 Premises Background

8.1 The premises located at 1 Chertsey Road was first licenced as a Co-Op Shop by the Licensing Authority on the 24 November 2005, following the introduction of the Licensing Act 2003. Before this date it seems that it was licenced, but the details of which would have been under the control of the Justice of the Peace who had the responsibility under the Licensing Act 1964.

8.2 In January 2008 the premises changed from being a Co-Op to being a Budgens.

8.3 On the 16 February 2017, the Premises Licence for Budgens was transferred over to become the responsibility for Mr Nurul Islam of 8 Woodlands Court. Mr Islam also became the Designated Premises Supervisor for the premises.

8.4 Following a number of failed test purchases (where alcohol was sold to a minor) and a lack of confidence in the Premises, evidenced by visits to the site, on the 21 June 2018, Surrey Police called for a review of the Premises Licence, supported by Bucks and Surrey Trading Standards.

8.5 The Review Hearing was scheduled for the 1st of August 2018 and the Premises Licence Holder had arranged for Mr Waseem Sherwani of Welcome Skills Ltd to liaise with the Licensing Authority on his behalf.

8.6 On the 1st of August 2018, neither the Premises Licence Holder nor Mr Waseem Sherwani attended the hearing. The Licensing Sub-Committee made the decision to revoke the Premises Licence for Budgens. In line with the legislation the revocation is not

due to take place for another 21 days – effectively meaning they could keep trading until the 23rd of August 2018.

- 8.7 On the 15th of August 2018, the premises licence was transferred into the responsibility of Mr. Muhammad Waseem Khan-Sherwani. However due to Licensing Laws that state that the new licence holder steps into the shoes of the old licence holder without any changes to the licence, the conditions, or the outcome of Licensing Sub-Committees it did not prevent the licence being due to be revoked on the 23 August 2018.
- 8.8 On the 20 of August 2018, we received notification from Mr Sherwani that an appeal had been made by the former Premises Licence Holder to Guildford Magistrates Court. The Licensing Authority tried to advise Mr Sherwani that as Mr Sherwani was now the Licence Holder as of the 15 August 2018, the former Premises Licence Holder had no legal right to make an appeal on the 20 August 2018 as he was not the licence holder any more. However – what this did mean was that as an appeal was in process, they could continue trading until such time as a decision was made on their appeal.
- 8.9 On the 26 September 2018, at around 11.30am, Guildford Magistrates Court dismissed the appeal. Both Mr Waseem Sherwani, as the then current Premises Licence Holder, and the former Premises Licence Holder were in attendance. As there was no longer an appeal in process there was no longer a valid Premises Licence.
- 8.10 On the 26 September 2018, a visit was made to the premises at 17:03 by an off-duty Licensing Officer, whereupon not only was it evident that Alcohol was still being sold – but the visiting party was able to purchase alcohol despite there being no licence in place.
- 8.11 As a result, on the 26 September 2018, a visit was made to the premises at approximately 17:30 by uniformed officers from Surrey Police. The officers advised the manager on duty at the time that he must cease selling alcohol and must remove all alcohol from the premises. The manager that the Police spoke to was the former Premises Licence Holder whom Mr Sherwani had taken over from.
- 8.12 On the morning of the 27 September 2018 a follow up visit was made to the premises, whereupon Matthew Cobb from the Licensing Authority assisted Geanine Crowley, Licensing Officer for Surrey Police along with a uniformed Police Officer. It was evident that there was a large amount of alcohol still on the shop floor and it seemed that the advice provided by Police Officers the evening before had not been followed. The manager / former Premises Licence Holder was on site and when spoken to about why he had continued selling alcohol despite having no licence, he advised the attending group that Mr Sherwani had told him to carry on selling the alcohol. Whilst in attendance, staff of the shop were working to remove all the alcohol from the premises.
- 8.13 Mr Sherwani was written to about this infraction, and the Licensing Authority expressed their concerns about Mr Sherwani's lack of involvement, lack of understanding and lack of responsibility resulting in allowing the premises to continue trading even though he was well aware that the licence appeal had been dismissed.

9.0 Previous Licence Application

- 9.1 On the 25 September 2018 (prior to the events of sections 8.9 to 8.13 of this report), an application for a premises licence for Budgens at 1 Chertsey Road was received from Mr Muhammad Waseem Khan-Sherwani.

- 9.2 On the 28 September 2018, Geanine Crowley – as a consultee on the Premises Licence Application – expressed her concerns over Mr Sherwani’s suitability to be a Premises Licence Holder, and advised that she would be putting in an objection.
- 9.3 On the 30 September 2018 Mr Sherwani officially withdrew his application.
- 9.4 The fee for a Premises Licence Application is for the application and **not** the granting of the licence, and so as per the Licensing Act 2003 and the Licensing Act 2003 (fees) Regulations 2005 there is no legal provision for the refund of any application fees where a Premises Licence application is withdrawn or refused. However - as a gesture of good will, the Licensing Department issued Mr Sherwani with a 75% refund. This enabled Woking Borough Council to cover our costs as a Public Authority whilst also ensuring that Mr Sherwani was not out of pocket for his withdrawn application.

10.0 Current Licence Application

- 10.1 On the 9 October 2018, a new Premises Licence Application was received with the applicants being Mr Sherwani of 7 Essenden, South Croydon, and Mrs Eva Chowdhury of 8 Woodlands Court, Woking (the same address as the Premises Licence Holder who had been liable prior to Mr Sherwani taking over). This is the Premises Licence Application we are dealing with at this hearing.
- 10.2 The Designated Premises Supervisor (DPS) was listed as a Mr Mohammed Asif Parvez of 68 Lavender Vale, Wallington.
- 10.3 On the 6 November 2018 an email was received from Mr Parvez stating that there had been an application for a premises licence / personal licence made in his name for Budgens, and he did not want to go ahead with this. His involvement was removed from the Application and Mr Sherwani was duly notified. At the time of the writing of this report, no other DPS has been put forward for consideration.
- 10.4 The Section 182 Guidance on the Licensing Act states that conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. It expands on this by saying that Licence conditions:
- must be appropriate for the promotion of the licensing objectives;
 - must be precise and enforceable;
 - must be unambiguous and clear in what they intend to achieve;
 - should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
 - must be tailored to the individual type, location and characteristics of the premises and events concerned;
 - should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
 - should not replicate offences set out in the 2003 Act or other legislation;
 - should be proportionate, justifiable and be capable of being met;

- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format.

10.5 Following a review of the proposed conditions, the Licensing Authority is of the opinion that the vast majority do not meet the above guidance and therefore do not make suitable, appropriate or enforceable conditions. An overview of the proposed conditions, assessed in line with the S182 Guidance, is attached as Appendix 7.

11.0 The Red Fort

11.1 The Licensing Authority is currently dealing with another premises, The Red Fort, located at 39 Chertsey Road. The Premises Licence Holder and DPS for this site is Mr Nurul Islam (the former Premises Licence Holder and current manager of Budgens) and the agent who is acting on behalf of Mr Islam is Mr Waseem Sherwani of Welcome Skills.

11.2 The Red Fort is a restaurant and is only licenced for sale of alcohol **on** the premises.

11.3 In September 2018, information was received from Just-Eat showing that between February and September, there had been no less than 94 incidents resulting in the sale of 141 alcoholic beverages for off-sales. This was clearly in contravention of their licence and the Licensing Authority is currently dealing with Mr Sherwani and Mr Islam in relation to this incident.

12.0 Implications

Financial

12.1 There are no significant financial implications. A nationally set application fee is charged to defray the cost of processing applications.

Human Resource/Training and Development

12.2 None.

Community Safety

12.3 Addressed by considering the application.

Risk Management

12.4 The risks to the Council associated with determining an application are:

- Failure to undertake our statutory responsibilities within required timescales;
- Making a decision that could be challenged by the applicant via an appeal to the Magistrates Court with the possible consequence of costs being awarded against the Council; and
- Making a decision that compromises Community Safety.

12.5 These risks have been dealt with in the report under section 4.0 by highlighting that the Sub-Committee is required to determine this application for a premises licences under the Licensing Act 2003 having due regard to the four licensing objectives, national guidance,

the local licensing policy, relevant representations and evidence presented at the hearings. Determining applications in this way will reduce the risk of the decisions of the Council being open to challenge via appeal to the Magistrates court and promote Community Safety in the Borough.

Sustainability

12.6 The four licensing objectives addressed in the Council's licensing policy, which the Sub-Committee is obliged to have regard to in making its decision, are in line with the Council's sustainability aims.

13.0 Conclusions

13.1 The Sub Committee is requested to consider the report, the evidence it will hear, representations made, responses to question made and give its decision with reasons.

13.2 Any decision reached will not come into force until the 21 day appeal period expires or any appeal is dealt with by the Courts if so called.

REPORT ENDS