

**LICENSING PANEL
26 JULY 2017
2.00 - 3.30 PM**



Present:

Councillors Leake (Chairman), Ms Gaw, and Thompson

1. Declarations of Interest

There were no declarations of interest.

2. The Procedure for Hearings at Licensing Panels

The procedure for hearings at Licensing Panels was noted.

3. Application for a variation of Premises Licence for Shell Filling Station, 102 Yorktown Road, Sandhurst, GU47 9BH

The Panel carefully considered all the information presented, both written and oral, from:

- the Licensing Officer who outlined the issues;
- the Applicant,
- the Interested Parties;

together with reference to the appropriate Licensing objectives, the Council's own Licensing Policy and the Secretary of State's guidance. The panel particularly considered the sections of the policy that the applicant referred the panel to in his submissions. At the conclusion of the proceedings, all participants present confirmed that they had been given the opportunity to say all they wished to say. It was acknowledged at the commencement of the panel hearing that everyone present had all the relevant documentation before them and had an opportunity to read the material. During the panel, reference was made to the plan and where the interested parties' houses were in relation to the premises.

The Panel noted that there had been no representations made by the Police, or any of the other Responsible Authorities. The Panel bore in mind the promotion of the four licensing objectives, the relevant objectives in this case being existing noise and public nuisance.

The Panel decided that granting the licence would have an adverse impact on the promotion of the licensing objective of preventing public nuisance and particularly noise nuisance. The panel determined that the licence for the supply of alcohol 24 hours a day, seven days a week **should not be granted**.

The Panel agreed that the licence to sell Late Night Refreshment restricted to hot drinks only **should be granted**, as it was understood that the purchase of hot drinks would be an adjunct to the purchase of petrol, rather than the standalone purchase of alcohol. The Panel agreed with the suggestion made on the application form that this licence should be for drinks only.

Reasons

The Panel heard the account of residents and objectors, and were absolutely convinced that there was an existing, current and ongoing noise nuisance caused by the premises' 24 hour opening times which had been exercised for the previous two months. The panel assessed the demeanour of the presentation of those making representations both for the applicant and the interested parties (objectors) and believed that both parties were honest, gave accurate evidence and their evidence was cogent.

They believed that the representative for the garage would go back and try and introduce some changes to working practices that will be designed to reduce the level of noise nuisance. However, the panel believed that the operating model at the garage at night with lone worker cashiers using a tannoy to communicate with customers would be difficult to reduce noise nuisance because of the requirements associated with the sale of petroleum. The panel determined, on the balance of probabilities as a matter of fact, that the garage operations at night time are currently posing a noise nuisance to residents in the vicinity of the licensed premises. The panel concluded that the noise was in part attributable to the operation of the garage as vendors of petroleum which falls outside of its remit as licensing panel.

The panel then went on to look at whether there would be noise associated with the sale of alcohol. The Panel determined that given the existence of current noise together with evidence of anti social behaviour, anyone buying alcohol during the hours of 11am and 6pm would be more likely to be associated with anti social behaviour and noise nuisance, and the current working arrangements at the licensed premises during the hours of 11pm and 6pm would not be able to mitigate against noise and public nuisance.

The panel went on to consider late night refreshment and felt very clearly that people would only come to the premises for a hot drink as an ancillary act to purchasing petroleum. Based on the submissions considered, the panel were persuaded that people would come to the licenced premises at night just to purchase alcohol, and would bring with them the high probability of noise nuisance and anti social behaviour that would disturb the sleeping patterns of the interested parties. The panel heard submissions from the interested parties both in written and oral form that the interested parties were experiencing anti social behaviour in the form of people urinating in the gardens which the panel accept occurred. The Panel believed that the sale of alcohol at night time would considerably add to the anti-social behaviour. It was not thought that the purchase of hot drinks would encourage additional customers and rather would be an ancillary purchase to that of petrol, so the Late Night Refreshment licence was agreed to be granted.

The panel are aware that a decision of this nature may not be one that is agreed by all and another panel may come to another decision. However, the panel carefully considered the material before them as they are required to do. They applied that material to the decision making process and were minded to do the minimum required to achieve the promotion of the licensing objective, namely avoidance of noise nuisance and prevention of public nuisance. In coming to this decision, they had to separate out the noise associated with the operation of the garage selling petroleum throughout the night which is outside the panel's jurisdiction, and the impact on noise nuisance and public nuisance related to the sale of alcohol which is within their remit. The panel concluded on the material before them that there was clear evidence of an existing noise nuisance associated with the sale of petrol and that there would, as a finding of fact on the material before them, be nuisance and

public nuisance associated with the sale of alcohol through out the night. The panel concluded that the current and proposed working practice of sole night time workers is not able to control or mitigate noise nuisance associated with petroleum sales, so would not be able to control noise and public nuisance associated with the sale of alcohol throughout the night as the same operational approach would be applied to both sales and licensed regimes. If that operational approach does not work for mitigating noise and public nuisance for one type of sale (sale of petroleum), it cannot mitigate noise and public nuisance for the sale of alcohol which the Panel believed between the hours of 11pm and 6 pm would be more challenging to control and would as a consequence not promote the licensing objective of avoiding noise and public nuisance. Whilst the panel accepted the applicant's agent has offered to work with objectors and residents to try and prevent disturbances like sweeping the forecourt in the early hours, the principle operating arrangements are not going to change and the panel were not satisfied that the lone worker operating arrangements between 11pm and 6pm would be sufficient at this site to control noise and public nuisance to those living in the vicinity of the licensed premises. Under the current arrangements at the hearing, the overall operating arrangements at the site did not allow the applicant to reduce noise nuisance or public nuisance associated with either the sale of petroleum which is outside our jurisdiction or the sale of alcohol, which is within our jurisdiction during the night and late evening. Residents are entitled to an undisturbed late evening and nights sleep.

The Panel reminded residents of their ability to raise other matters with the premises such as noise and light pollution with Environmental Health and the Police if they remained an issue.

The Panel found compelling evidence in the written submissions by the interested parties to suggest that incidents of noise nuisance and public nuisance would increase as a result of the premises licence being amended to sell alcohol throughout the extended hours applied for. No representations had been received by the Police with regards to this or any of the four licensing objective.

In summary, the Panel were convinced that an existing noise nuisance and public nuisance problem would be exacerbated by the provision of alcohol from the Shell Filling Station, Yorktown Road, however the licence for Late Night Refreshment was not anticipated to generate additional traffic and customers as hot drinks would be an ancillary purchase to petrol.

The Panel also agreed the updated premises plan put before them by the Licensing Authority.

The applicant was reminded that the Panel's decision was binding upon applicant and the Licensing Authority, and that any appeals should be made to Reading Magistrates Court who process all applications for the East Berkshire area.

CHAIRMAN