

# LICENSING SUB-COMMITTEE

## MINUTES OF THE MEETING HELD ON WEDNESDAY, 15 OCTOBER 2014

**Councillors Present:** Peter Argyle (Chairman), Manohar Gopal and Andrew Rowles

**Substitute:** Sheila Ellison

**Also Present:** Sarah Clarke (Legal Services), Laura Knowles (Trainee Solicitor) and Emilia Matheou (Environmental Health & Licensing) and Jude Thomas

### PART I

#### 1. **Declarations of Interest**

There were no declarations of interest received.

#### 2. **Application No. 14/01406/LQN - Domino's, 5 The Broadway, Newbury, RG14 1AS**

In agreement with all parties, the start of the Hearing was adjourned until 2:30pm to allow Members and other relevant parties present time to consider additional documentation that had been tabled by the Applicant. The additional documentation amounted to a skeleton argument, four pages of the training manual (not for publication) and details of additional voluntary conditions being offered by the applicant.

*The meeting reconvened at 2.30pm.*

The Sub-Committee considered a report (Agenda Item 2(1)) concerning Licensing Application 14/01406/LQN in respect of Domino's, 5 The Broadway, Newbury.

In accordance with the Council's Constitution, Emilia Matheou (Licensing Officer, West Berkshire Council), John Gaunt of John Gaunt and Partners (representing the Applicant) and Sigurd Wilberg (Applicant), Councillor Phil Barnett (objector) and Ian Wootton (Responsible Authority) addressed the Sub-Committee on this application.

Ms Matheou, in addressing the Sub-Committee, raised the following points:

- West Berkshire Council received an application made under Section 34 of the Licensing Act 2003 to vary a premises licence for Dominos in Newbury.
- The application was accepted on 2 September 2014 and the responsible authorities were advised of the application by email the same day.
- The application was to include the sale by retail of alcohol, for consumption off the premises from Monday to Sunday 10:00am to 5:00am. Alcohol would only be sold with food orders for home delivery.
- The 28 day consultation period concluded on 30 September 2014.
- The application had been advertised in accordance with the regulations with blue notices displayed at the premises, witnessed by an officer on 3 September 2014, and by publishing a notice in a local newspaper, the Newbury Weekly News, on 11 September 2014.
- During the statutory consultation period of 28 days, two representations had been received; the first, on behalf of Public Health and Wellbeing and the Local Safeguarding Children Board (LSCB), both of which were Responsible Authorities,

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on 2 September 2014 and the second, from Newbury Town Council on 17 September 2014.

- The objections to the application were based on a combination of the four licensing objectives; the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.
- Some mediation had taken place; John Gaunt, on behalf of the applicant, had emailed Public Health and Wellbeing on 12 September 2014 addressing Mr Wootton's specific concerns.
- Mr Gaunt also emailed Newbury Town Council on the 23 September 2014 detailing how the sale of alcohol would be controlled.
- Both objectors had indicated that these representations should be heard by the Licensing Sub-Committee in this case.

Mr Gaunt, in addressing the Sub-Committee, raised the following points:

- That, having presented his skeleton argument and extracts from the training programme in writing to the Panel he would not detail them within his presentation.
- That the applicant held the franchise for eight units and was 'pioneering' the delivery of alcohol as a limited facility, in addition to food.
- That it was an important but not a substantial part of the business.
- The choice of alcohol was limited and advertised only on the bottom of the menu.
- The applicant had pre-consulted with the police and no representation from them had been received.
- With regard to Mr Wootton's concerns, Mr Gaunt clarified that staff would be fully trained with a refresher course every six months; Challenge 25 would be in operation, cars rather than mopeds would be used for delivery.
- With reference to Mr Wootton's request that the hours of licence be reduced from 11:00am to 11:00pm, Mr Gaunt stated that he did not accept that there was any evidence to justify the need to limit the hours, citing West Berkshire Council's Licensing Policy, Section 9.2, which stated that shops, stores and supermarkets should, generally, be allowed to sell alcohol for the full duration of opening.
- Mr Gaunt expressed his disappointment that the Hearing had gone ahead after he had sought to mediate with the Town Council about its concerns.
- With regard to Newbury Town Council's representation, Mr Gaunt referred to pages within the Domino's National Training Manual that addressed issues of underage and proxy sales.
- Mr Gaunt explained that delivery drivers were trained and, if in any doubt that customers were under age or that proxy sales were taking place, items would be refused. It was further explained that alcoholic items were locked in the delivery vehicle on arrival and only given to customers when staff were satisfied that they were over 18.
- Mr Gaunt concluded by saying that, in his opinion, there was no evidence that the representations were justified and that because the Applicant, Mr Wilberg, was pioneering this service, it was all the more important that it was managed appropriately. He, therefore, asked the Panel to grant the variation on the licence.

Mr Wilberg explained to the panel that, as a franchisee, he was responsible to both the local authority and Domino's, the parent company.

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Councillor Peter Argyle asked if all staff, premises and delivery, were trained before starting in post. Mr Gaunt confirmed that, if the licence variation was granted, all staff would receive extensive training before going 'live'.

In response to Councillor Argyle's question about the meaning of, 'no liquor will leave the premises in an open container' contained within the application, Mr Gaunt confirmed that this was a standard term duplicated from another application and not relevant to this application.

Councillor Andrew Rowles questioned whether customers would be asked at the point of placing an order, whether they would be receiving the goods on delivery. Mr Gaunt confirmed that the customer placing the order would have to identify themselves at point of delivery as part of the payment card process.

Councillor Rowles also asked about the pioneering nature of this application and whether the applicant held similar licences elsewhere. Mr Gaunt confirmed that Mr Wilberg had applied and been granted such a licence in Bath recently, and that there were similar arrangements in other authorities. He explained that the company was aware of the seriousness of the application and was progressing slowly with the development.

Councillor Manohar Gopal asked if a record was kept of complaints and refusals and Mr Gaunt confirmed that a specific refusals log was kept as standard practice. A central register was also kept by Domino's and entries and patterns of recording were analysed.

Further papers from the training records showing an example of the refusals log were circulated to Members and the objectors on the agreement of the parties to the hearing.

Councillor Argyle asked what procedures were in place to safeguard staff, should a problematic situation develop following the refusal of alcohol at the point of delivery. Mr Gaunt explained that safeguarding issues had been discussed with the police and that the training manual addressed the procedure for diplomatic refusals. In the worst case scenario, delivery drivers were advised to refuse to deliver anything, leave the premises and contact the police. Mr Gaunt further explained that the company worked with the police on issues of crime and disorder on a continual basis and that he was not aware that this had been an issue elsewhere.

In response to a question from Councillor Argyle, Mr Gaunt confirmed that all drivers had mobile phones.

Mr Wilberg explained that difficult situations did arise occasionally without alcohol, and that staff were trained to leave the premises and report the incident to the police for them to deal with.

Councillor Phil Barnett, on behalf of Newbury Town Council, asked to what distance, outside Newbury, this store delivered and Mr Gaunt confirmed that, although the national policy stated that stores delivered within a five mile radius, traffic issues in the area had meant that the Newbury store had had to limit the distance in order to meet time guidelines for delivery.

Councillor Barnett also asked about the age of delivery drivers and was informed that, whilst some were younger, the average age of the delivery drivers was 31 years.

Councillor Phil Barnett, representing Newbury Town Council, in addressing the Sub-Committee, raised the following points:

- Newbury Town Council Planning and Highways Committee had been concerned when this application had come before them and the evidence submitted by the Applicant immediately prior to this Hearing, would have been helpful.
- There was concern amongst Town Councillors that this application would set a precedent for other local businesses.

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- That, as a number of bodies were working to reduce the consumption of alcohol, the granting of this application would encourage its consumption.
- That said, the long established local pizza sales and delivery was appreciated by residents.
- That close scrutiny and monitoring of any issues was needed, should the application be granted.

The Panel had no further questions for Councillor Barnett.

Mr Gaunt explained to Councillor Barnett that he had tried to engage with Newbury Town Council before the hearing and Councillor Barnett conceded that severe staff shortages might have impacted on the Council's ability to respond.

Mr Gaunt asked Councillor Barnett whether, beyond the original representation, he had any evidence to suggest that Mr Wilberg owned a badly run operation and that he would mismanage the licence. Councillor Barnett confirmed that he did not.

Ian Wootton, representing Public Health and Wellbeing and the Local Safeguarding Children Board (LSCB), in addressing the Sub-Committee, raised the following points:

- That although there were no representations from the police, they would not be expected to object on the same grounds as Public Health and Wellbeing.
- The Authority's concern was to reduce the number of alcohol related incidents and this was done, in part, by encouraging the reduction of alcohol trading hours. With this in mind, Mr Wootton was requesting the reduction in hours from 10:00am - 5:00am to 11:00am to 11:00pm.
- Mr Wootton confirmed that he was withdrawing his objections relating to transport and Challenge 25, based on the answers he had received at the Hearing.
- Mr Wootton remained concerned about the safety of delivery drivers when alone and faced with a number of potentially drunk customers.
- Mr Wootton asked for the assurance of a minimum order to avoid one pizza and multiple alcoholic items being ordered.
- On behalf of Public Health and Wellbeing, Mr Wootton expressed concern for the safety of children at the houses that were taking delivery of the alcohol.

Councillor Rowles informed Mr Wootton that, whilst he took his concerns seriously, 'we lived in a free society' where supermarkets were open 24 hours a day and delivered alcohol to homes.

In response, Mr Wootton advised that Sainsbury's had been proactive, nationally, in reducing the trading hours for alcohol and had also removed alcoholic products from their Nectar scheme.

Mr Gaunt asked Mr Wootton whether he had any evidence that Domino's would irresponsibly manage the licence. Mr Wootton responded that he was unable to comment as, currently, the varied licence had not been granted.

Mr Gaunt also asked Mr Wootton whether the licence would adversely impact on incidences of domestic violence, town centre violence and accessing of services from GP surgeries. Mr Wootton confirmed that he believed that it would not for the incidences of violence, but would for the latter.

When asked for evidence specific to this application by Mr Gaunt, Mr Wootton stated the increase in sales of alcohol led to the increase in number of residents accessing GP and hospital services. Mr Gaunt did not accept that this evidence was specific to the application.

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In addressing the comments, Mr Gaunt appreciated that Councillor Barnett's concerns were tempered by the information provided at the Hearing.

With regard to Mr Wootton's concerns, Mr Gaunt advised that there existed four licensing objectives, not five and that Public Health was not an objective.

He further commented that the Panel had to decide on the basis of evidence and that there was no evidence that this application would cause a problem.

Mr Gaunt stated that the premises should be licensed for the time that it was open and that there was no reason not to grant the variation to the licence.

Mr Wilberg further concluded that he was applying to sell alcohol as a supplement to food and, whilst it was difficult to be precise, 'silly amounts' of alcohol would not be delivered.

Mr Gaunt concluded by offering a further condition:

- That the supply of alcohol was ancillary and therefore, subservient to the delivery of pizza.

There were no further questions from Members.

The Sub-Committee retired at 3:30pm to make its decision.

Having taken all relevant representations into account, the Licensing Sub-Committee **RESOLVED** that Application reference 14/01406/LQN in respect of Domino's, 5 The Broadway, Newbury, be granted subject to the conditions set out in the operating schedule and any relevant mandatory conditions as prescribed by the Licensing Act 2003 and the following additional conditions imposed by the Licensing Sub Committee:

1. Alcoholic drinks will not be sold direct to customers over the counter but such sales will be limited to food delivered to home or business premises.
2. Each sale of alcohol will be ancillary to the sale of food.
3. Staff will receive training on matters concerning under age sales, sales to drunks and operating procedures generally with regular refresher training being provided and evidence of such training and re-training shall be provided to the police and Licensing Authority upon request.
4. The premises shall operate a proof of age scheme and require photographic identification from any customer who appears to be under the age of 25 years at the point of delivery.
5. The management of the premises will liaise with the police over issues of local concern or disorder.
6. There shall be no drinks promotions at the premises which are inconsistent with the need to promote responsible drinking.
7. Whenever alcohol is delivered to the purchaser, it shall only be delivered to a residential or business address. The receiver of the alcohol must be able to prove to the person delivering alcohol that they are resident or an employee at the premises and must be inside the building or at a doorway of the business, house or flat.

Reasons:

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The Sub-Committee noted the objections to the application made by the Town Council and on behalf of Public Health and Wellbeing and the Local Safeguarding Children Board.

The Applicants representative had referred to the fact that public health was not one of the four licensing objectives. However, it was noted that the Director of Public Health was a responsible authority for the purposes of the Licensing Act 2003. In addition, the Guidance states that physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption.

The Applicant had entered into pre-application discussions with the police and it was noted that there was no objection to the Application from the police, who are a key source of information and advice on the impact of licensable activities, particularly on the crime and disorder objective. However, the absence of a representation from the police did not undermine representations received from other parties, particularly responsible authorities, who made relevant representations in respect of an application. The Sub-Committee therefore had regard to the representations received in reaching its decision.

The Sub Committee noted that the Council as Licensing Authority must determine each application under the Licensing Act 2003 on its merits, and every decision must be both justified and proportionate based on the available evidence.

Although evidence was presented to the Sub-Committee relating to the impact of alcohol consumption generally within the district of West Berkshire, there was no evidence to suggest that the premises concerned had contributed to those problems. Further, there was nothing to suggest that the licence, if granted, would result in an increase in the problems identified. The Sub-Committee considered that it was relevant that both the objector and representative of the responsible authorities acknowledged this fact.

It was noted that the Applicant had also offered additional conditions in the hope that these would address the concerns raised by the objector and responsible authorities.

The Sub-Committee considered that the additional conditions that had been proposed by the Applicant were proportionate, reasonable and appropriate to meet the requirements of the Licensing Objectives. The Sub Committee therefore determined that the licence should be granted subject to the conditions as detailed above.

*(The meeting commenced at 2.30 pm and closed at 3.30 pm)*

**Name** .....

**Date of Signature** .....

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**LICENSING SUB-COMMITTEE - 15 OCTOBER 2014 - MINUTES**

**Date of Signature** .....