

# **LICENSING SUB-COMMITTEE**

## **MINUTES OF THE MEETING HELD ON FRIDAY, 22 OCTOBER 2021**

**Councillors Present:** Graham Bridgman, Tony Linden, Graham Pask and Claire Rowles

**Substitute:** Tony Linden

**Also Present:** Laura Knowles (Trainee Solicitor) and Brad Timm (Public Protection), Jo Watt (Member Services Officer) and Gillian Steele (Democratic Services Officer (observing)).

### **PART I**

#### **7 Election of Chairman**

Following a vote, Councillor Graham Bridgman was elected as Chairman of the Sub-Committee.

#### **8 Declarations of Interest**

There were no declarations of interest received.

#### **9 Application No. 21/00705/LQN Aldi Foodstores, London Road, Newbury, RG14 1LA**

Councillor Graham Bridgman, Chairman of the Sub-Committee, welcomed everyone to the meeting and explained the hybrid meeting process. The applicant's solicitor (Ms Lisa Gilligan of Freeths LLP, representing Aldi Food Stores Limited) who had joined the meeting via Zoom confirmed she had heard and understood the introduction, and confirmed that she would alert the Sub-Committee if she could not hear at any stage during the meeting. All other attendees were present in the room.

Councillor Bridgman went on to explain the order in which parties would be asked to speak and when there would be an opportunity to ask questions of the parties. It was noted that each party or group would have up to 10 minutes to make their representations.

Councillor Bridgman introduced the Sub-Committee and the officers in attendance in the Council Chamber.

The Sub-Committee considered a report (Agenda Item 3(1)) concerning a Licensing Application from Aldi Stores Limited (represented by Ms Lisa Gilligan of Freeths LLP) for a variation to an existing premise licence in relation to Aldi Foodstores Limited, London Road, Newbury, RG14 1LA. This application had been recorded under reference number 21/00705/LQN.

In accordance with the Council's Constitution, Brad Timm (Licensing Officer, West Berkshire Council) and Ms Lisa Gilligan (representing the applicant, Aldi Food Stores Limited) addressed the Sub-Committee on this application.

The objector to the application (Newbury Town Council) was not in attendance. The written objection submitted by Newbury Town Council (and included in the agenda at page 37) was considered by the Sub-Committee.

Brad Timm, in addressing the Sub-Committee, raised the following points:

## LICENSING SUB-COMMITTEE - 22 OCTOBER 2021 - MINUTES

- The application was to vary a premises licence under the Licensing Act 2003. The application sought to amend the hours for the sale of alcohol for off premise consumption and opening hours to 06:00 to 00:00 every day of the week (from the existing hours of 08:00 to 23:00 every day). Following discussions with Environmental Health a compromise in times had been agreed. Therefore, the applicant now sought to amend the hours for sale of alcohol (Box J of the application) and opening hours (Box L of the application) to:

Monday to Sunday (every day): 0700 to 2300

- The applicant had confirmed that the application had been submitted as part of a nationwide programme for Aldi stores (circa 400 stores) where the current licence had a 0800 start time. It was noted that that the store had opened at 0700 over the last 12 months on occasion, either by virtue of a Temporary Events Notice (TEN) or simply to achieve social distancing under Covid-19 rules. The applicant also stated that whilst there was no intention to change the trading hours at this store on a daily basis, an extension to the hours in the licence operating schedule would permit the flexibility required.
- **The 28 day consultation period ran from 1st September 2021 to 28th September 2021. The Responsible Authorities, Ward Members and the Parish Council had been advised by email on the 31st August 2021. The application had been advertised in accordance with the Regulations, with the required blue notices being placed at the premises and checked by an officer from the Public Protection Partnership on the 9th September 2021 and an advert had been placed in the Newbury Weekly News on 9th September 2021.**
- **During the consultation period, two objections had been received. The first objection had been from Environmental Health regarding the potential impact of noise (vehicle engines, car stereos and doors being slammed) on the dwellings in close proximity to the store. The applicant had taken on board these concerns and on the 12 October 2021 had confirmed that they would be willing to amend the start time to 07h00 and the terminal hour as it was in the original licence (23h00 Monday to Sunday). On this basis, Environmental Health had agreed to withdraw their objection, allowing for review of the premises licence should nuisance complaints subsequently be received.**
- Newbury Town Council had submitted an objection following a meeting of their Planning and Highways Committee on the 13th September 2021. The submission had stated that they had objected to the application on the basis of the impact that it would have on local residents. Attempts at mediation had been made with Newbury Town Council, however, the Committee that had made the original objection was not meeting again until 25<sup>th</sup> October 2021 and therefore the matter could not be reviewed in time for the Sub-Committee.
- With the exception of the initial objection from Environmental Health, no other representations had been received from the Responsible Authorities.

In response to a question from the Chairman of the Sub-Committee, Councillor Graham Bridgman, it was noted that that the timings listed in the Licensing report were incorrect. The Licensing Officer confirmed that the existing licence timings shown in the licence included at Appendix 1 of the Licensing report, in the agenda pack were correct (namely 0800 – 23:00 every day for both the sale of alcohol and store opening times) and this was the licence the application to vary concerned. The application to vary the licence

## LICENSING SUB-COMMITTEE - 22 OCTOBER 2021 - MINUTES

now sought a start time of 0700 with the terminal hour remaining at 23:00. There were no current seasonal variations and none requested.

Ms Lisa Gilligan of Freeths LLP, representing the applicant, in addressing the Sub-Committee, raised the following points:

- The application to vary the existing licence sought to change the start time for the sale of alcohol and store opening from 0800 to 0700. The terminal hour would remain unchanged at 23:00
- The application was one of around 400 applications made by Aldi Stores Limited nationwide to bring some consistency to store opening and sale of alcohol hours across the business. A number of the older stores (such as Newbury) still had a start time of 0800 from the original licence and current practice is for Aldi Stores Limited to request the hours of 06:00 to 00:00 in new premises applications.
- The additional hour would allow the store to operate more flexibly at certain times of the year, for example at Christmas or if social distancing was required to be reintroduced in stores. In the past this flexibility was achieved by applying for a Temporary Event Notice (TEN).
- Whilst the amended start time would give operational flexibility, there was no intention that the store would open daily at 0700. It was anticipated that the next time the store would open at 0700 (if the licence was granted) would be in the week in the run up to Christmas.
- The applicant had noted the concerns raised by Environmental Health and had adjusted the requested start time to 0700 accordingly. None of the other Responsible Authorities had made a representation.
- The applicant had worked amicably with Environmental Health and had had a good conversation with Newbury Town Council regarding their objection but unfortunately time had run out before mediation could be achieved.

In response to a question from the Chairman of the Sub-Committee, Councillor Graham Bridgman, Ms Gilligan confirmed that Sunday Trading legislation would take precedence over any hours agreed in the licence. The store would therefore be subject to Sunday trading hours on a Sunday.

Following a question from Councillor Claire Rowles about Newbury Town Council's representation that the application would impact on nearby residents, Ms Gilligan said that whilst she had made contact with Newbury Town Council, she was not able to provide any further information on the nature of their objections as that had not been discussed. She confirmed that she was not aware of any objections being received by local residents and that there was no history of complaints in relation to the store.

The Sub-Committee considered the written objection of Newbury Town Council (page 37 of the agenda). Councillor Graham Bridgman, Chairman of the Sub-Committee noted that this objection was based on the original request to vary the start time to 0600 to 00:00 not the revised time of 0700 to 23:00 as agreed between the applicant and Environmental Health. Given no representative from the Town Council was in attendance it was not possible to know what their view was of the proposed 0700 start time.

In summing up, Ms Gilligan, representing the applicant said that the revised application to vary the licence sought a new start time of 0700 – 23:00 for the sale of alcohol and store opening every day of the week and asked the Sub-Committee to grant this variation, which had been agreed with Environmental Health.

The Sub-Committee retired at 10.30 am to make its decision.

## NOTICE OF DECISION

The Licensing Sub-Committee of West Berkshire Council met on 22 October 2021 and resolved to approve **Application 21/00705/LQN**, for a variation to an existing premises licence **12/01449/LQN** in respect of **Aldi Foodstores, London Road, Newbury, RG14 1LA**.

In coming to their decision, the Sub-Committee had regard to the four licensing objectives, namely:

- 1 the prevention of crime and disorder;
- 2 public safety;
- 3 the prevention of public nuisance; and
- 4 the protection of children from harm.

They also considered the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 and West Berkshire Council's Statement of Licensing Policy.

The Sub-Committee considered the Application submitted by the Applicant.

The Sub-Committee noted that Environmental Health as a Responsible Authority had proposed an amendment to the variation being sought by the Applicant. This had been accepted by the Applicant. Written representations made by Environmental Health had been withdrawn following the agreement reached.

The Sub-Committee heard oral representations made by:

- **The Applicant:** Ms Lisa Gilligan of Freeths LLP (agent) on behalf of Aldi Stores Limited.

The Licensing Sub-Committee considered the written representations of the following who did not attend:

- **Objector:** Newbury Town Council.

The Sub-Committee and parties present at the hearing had the opportunity to ask questions in respect of the Application, the written representations and oral representations.

### Decision

Having taken those representations into account, the Licensing Sub-Committee **RESOLVED** that **Application 21/00705/LQN** be granted and **Licence 12/01449/LQN** be varied:

### **Operating Schedule**

## LICENSING SUB-COMMITTEE - 22 OCTOBER 2021 - MINUTES

### **Box J: Supply of Alcohol (off the premises)**

Monday to Sunday 07:00 – 23:00

### **Box L: Hours premises are open to the public**

Monday to Sunday 07:00 – 23:00

*(Informative: The store is not necessarily (or currently) open to the public at all times during these hours but these hours are the parameters within which the Applicant may set their opening hours.)*

### **Reasons**

The Licensing Sub-Committee took into account the written and oral representations made.

The Sub-Committee carefully considered the written representation submitted by the objector, Newbury Town Council. Whilst the written objection was not explicit as which of the four licensing objectives the objector was referencing, it appeared to relate to the prevention of public nuisance (relating as it did to the “impact on nearby residents”).

It was noted that the representation specifically referenced that the Application sought to vary the licensed hours for supply of alcohol (off premises) from 08:00 to 23:00 every day of the week under the existing licence to 06:00 to 00:00 every day of the week and expressed concern that there would be impact to nearby residents in relation to these additional hours.

The Sub-Committee took into account that no Responsible Authority (other than Environmental Health) had objected to the Application, including Thames Valley Police and the Local Safeguarding Children Board.

The Sub-Committee noted that Environmental Health, a Responsible Body who are a key source of information in relation to public nuisance, had proposed that the Applicant amend the hours sought in the Application from 06:00 to 00:00 (every day of the week) to 07:00 to 23:00. It was noted that Environmental Health put forward this proposal further to the licensing objectives, namely the prevention of public nuisance, to address concerns it had in respect of additional noise residents would be exposed to between 23:00 and 07:00 which it considers to be ‘night-time’. The Applicant had agreed to the proposal.

Therefore the Application before the Sub-Committee was to vary the licensed hours for the supply of alcohol (off premises) and opening hours as stated in the existing licence from 08:00 to 23:00 to 07:00 to 23:00 Monday to Sunday - an increase of one hour in the morning.

The Sub-Committee afforded appropriate weight to the written objection in the circumstances and in light of the fact that no objectors attended the hearing or made an oral representation. The Applicant confirmed to the Sub-Committee at the hearing that they were not aware of any concerns having been raised by nearby residents with itself or Environmental Health.

## LICENSING SUB-COMMITTEE - 22 OCTOBER 2021 - MINUTES

The Sub-Committee decided there was no evidence that the licensing objectives would be undermined by the variation of one hour. The Sub-Committee noted there are conditions on the existing licence to promote the licensing objectives and decided it was not proportionate, reasonable or appropriate to attach additional conditions to the variation.

The Sub-Committee also found there was no reason to restrict the hours for the supply of alcohol (off premises) beyond the hours the premises may be open to the public in accordance with Statutory Guidance and the Council's Statement of Licensing Policy relating to stores.

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 own merits, and every decision must be both justified and proportionate based on the available evidence and in accordance with the Statutory Guidance and the Council's Licensing Policy.

*(The meeting commenced at 10.00 am and closed at 10.30 am.)*