

BOROUGH COUNCIL OF KING'S LYNN & WEST NORFOLK

**Minutes of the Licensing Sub Committee Meeting
held on Tuesday 15th October 2013 at 9.30am
in the Committee Suite, King's Court, Chapel Street, King's Lynn**

PRESENT:

Sub-Committee Members:	Councillor C Crofts (Chairman) Councillor A Lovett Councillor C Manning
Borough Council Officers:	Rachael Edwards - Senior Democratic Services Officer John Gilbraith - Licensing Manager
Legal Advisor:	Cara Jordan
Premises:	Asda Supermarket, Langley Road, South Wootton
Applicant:	Asda Stores Ltd
Applicant's Representative:	Richard Taylor, Gosschalks Solicitors
Applicant's Witness:	Jamie Durrant, Asda Supermarket (Store Manager)
Other Persons: (In attendance)	Mr C S Moore (also representing Mrs Boldero) Ms V West Ms L Copeman

1. WELCOME AND APOLOGIES

The Chairman welcomed everyone to the meeting and declared that the Sub-Committee were sitting to consider a variation application in respect of Asda Supermarket, Langley Road, South Wootton.

There were no apologies.

2. ITEMS OF URGENT BUSINESS

There were none.

3. DECLARATION OF INTERESTS

There were none.

4. **TO CONSIDER AN APPLICATION FOR A VARIATION OF A PREMISES LICENCE IN RESPECT OF ASDA, LANGLEY ROAD, SOUTH WOOTTON**

The Chairman introduced the Sub-Committee Members and the Borough Council Officers and explained their roles. He also introduced the Legal Advisor, Cara Jordan and explained her role. The applicant's representative and his witness and 'other persons' present introduced themselves.

5. **THE PROCEDURE**

The Legal Advisor outlined the procedure that would be followed at the hearing.

6. **THE APPLICATION**

The Licensing Manager presented his report and explained that a premises licence was required under the Licensing Act 2003 (the 'Act') for the sale of alcohol, regulated entertainment or for the provision of late night refreshment (i.e. the supply of hot food and drink between 11pm and 5am). The four licensing objectives to be considered when determining the application, and relevant representations, were:

- the prevention of crime & disorder,
- public safety,
- the prevention of public nuisance, and
- the protection of children from harm

Asda Stores Limited had made an application under Section 34 of the Licensing Act 2003 to vary the premises licence for the Asda Supermarket in South Wootton as follows:

- (a) To permit the sale of alcohol from 6am to 12 midnight Monday to Sunday inclusive;
- (b) To permit the provision of late night refreshment from 11pm to 12 midnight Monday to Sunday inclusive; and
- (c) To add additional conditions consistent with the operating schedule (see paragraph 4 below).

A copy of the application had been attached at Appendix 1 and a copy of the current premises licence had been attached at Appendix 2.

Mandatory Conditions

The variation application would not attract any additional mandatory conditions.

Conditions Consistent with the Operating Schedule

The variation application would attach two conditions which were consistent with the operating schedule

- a) A digital CCTV system shall be maintained at the premises which is capable of recording images for a continuous period of at least 28 days. Images must be capable of being downloaded in digital format upon reasonable request from representatives of the Police or the Licensing Authority. All staff on duty at the premises must be trained in the use of the system and be able to comply with any such request. The system will be maintained in good working order at all times. A CCTV monitor will be positioned so that a member of staff will be capable of seeing images from the cameras.
- b) Notices are to be prominently displayed advising customers of the age verification policy adopted by the licence holder in accordance with Condition 3.

Representation from Responsible Authorities

The Licensing Manager explained that under Section 13(4) of the Licensing Act 2003, it defined the 'Responsible Authorities' as the statutory bodies that must be sent copies of an application. Representations made must relate to the licensing objectives.

There had been no representations from any of the Responsible Authorities to consider.

Representations from 'Other Persons'

As well as Responsible Authorities, any other person could play a role in a number of licensing processes under the Act. This included any individual, body or business that was entitled to make representations to applications. Representations made must relate to the licensing objectives.

There were seven representations from 'other persons' to consider. Copies of these letters had been attached to the report at Appendix 3.

Notices

The applicant was responsible for advertising the application by way of a notice in the specified form at the premises for not less than 28 consecutive days and in a local newspaper. The Public Notice appeared in the Lynn News on Friday 6th September 2013 and should have been displayed on the premises until the 1st October 2013.

Plans

The variation application did not propose any changes to the layout of the premises. A location plan showing the approximate location of the objectors in relation to the supermarket had been attached at Appendix 4.

Questions to the Licensing Manager

In response to a query raised by Ms West, the Licensing Manager clarified that although a licence was required for the provision of late night refreshment between 11pm and 5am under the Licensing Act, Asda were only applying to provide this until 12 midnight.

There were no questions from the applicant's representative or Members of the Sub-Committee.

7. THE APPLICANT'S CASE

Richard Taylor, Gosschalks Solicitors, on behalf of the applicant, presented their case and also reiterated that Asda were only applying to sell hot food (late night refreshment) until 12 midnight. There was not a cafe located at the premises; the only hot food that was sold was patisserie chickens and hot bread, and as a caution a licence for the provision of this until midnight had been applied for. The store was currently able to open between 6am and midnight and the variation application had been submitted so that they could be in a position to sell their whole product range to customers (including alcohol) during opening hours. Mr Taylor explained that the current licence was not subject to any conditions (other than the mandatory conditions) and therefore, in order for it to be consistent with their other stores, the application proposed that two conditions consistent with the operating schedule should be attached to the licence (if granted).

Mr Taylor highlighted that there had been no representations from any of the Responsible Authorities. The store had a good relationship and worked closely with the local police. Mr Durrant had been in post at the store for a period one year and there had been no complaints about anti-social behaviour or nuisance within that period.

Mr Taylor explained that Asda operated a "Challenge 25" age verification policy and notices would be prominently displayed advising customers of this. Staff were also fully trained on the implementation of the policy and the store had a till prompt system for age restricted products. The proof of age scheme would be affected by the inspection of a recognised form of photographic identification and if this could not be produced, there would be no sale. Test purchases were also carried out by an independent company.

Mr Taylor referred to the additional correspondence that had been submitted by one of the objectors (which the Sub-Committee confirmed

they had received and read), in particular to the reference that “Asda were offering to install CCTV shows that they know anti-social behaviour will be a problem”. He explained that a digital CCTV system was already installed at the premises incorporating a real time monitoring system. In relation to concerns over litter, Asda also operated a “clean as you go” policy and would have extra litter cleaning teams on patrol. With regard to the reference in the correspondence that extra training would be given to staff so that alcohol would not be sold to under-age drinkers, Mr Taylor explained that relevant staff were already fully trained in this area. In relation to the concerns over anti-social behaviour and crime and disorder, Mr Taylor reiterated that the Police had not raised any objections to the application. The store was not manned until 6am in the morning and deliveries only took place after this time. However, it was highlighted that there were no plans, as a result of the application, to change anything in relation to deliveries.

Mr Taylor referred to Mr Moore’s representation and his concerns over the car park lights which he states were shining directly into the gardens and bedrooms of the properties in Burghley Road. Mr Durrant, the Store Manager had been in post since October 2012 and Mr Moore’s letter of representation was the first time that he had become aware of the issue. Mr Durrant, since the receipt of the Agenda, had been in direct contact with Mr Moore and the angle of the lights had been adjusted. Mr Taylor however, acknowledged, that after speaking to Mr Moore immediately before the hearing commenced, that there were still some issues to be resolved in terms of the lighting which Mr Durrant would continue to work with Mr Moore on resolving. He did suggest that the concerns with the lights were not necessarily a licensing consideration.

Questions to the applicant’s representative/applicant’s witness

There were no questions from the Licensing Manager.

In response to a query in relation to why the application had included the provision of late night refreshment both indoors and outdoors, Mr Taylor explained that any purchases of hot food would in fact be consumed away from the premises, albeit the application had been submitted to avoid any potential criticism of a technical nature.

Mr Moore referred to problems experienced with litter being thrown into gardens (such as beer cans, coke cans) from people walking on their way home from the store and questioned what plans were in place to address this problem. Mr Taylor referred to statutory guidance in that beyond the immediate area surrounding the premises, these were matters were the personal responsibility of individuals under the law and were outside the direct control of the store.

In response to a question raised by Councillor Lovett in relation to whether the CCTV system operated was “real-time recording” and overseen by a specific member of staff, Mr Durrant explained that a

CCTV monitoring station was situated at the back of the store with two CCTV monitors situated on the shop floor. A CCTV monitor was positioned so that an individual member of staff could view it at all times. Councillor Lovett further questioned whether there were any plans to add an additional monitor in the car park/surrounding area. Mr Taylor stated that particularly in light of no representation from the Police, there were no plans to add an additional monitor to the existing system. Mr Durrant further clarified that monitors were currently situated at the entrance and exit to the store.

In relation to questions over the frequency in which the cleaning team would operate, Mr Durrant explained that they worked on a daily basis at intermittent times but would operate between the hours of 6am and midnight.

8. OTHER PERSONS CASE

Mr C Moore

The Chairman acknowledged that Mr Moore was not only representing himself, but also his neighbour, Mrs Boldero.

Mr Moore (representing himself) explained that he had raised his concerns about the car park lights some 2 years ago and whilst he acknowledged the reason for the lights for safety and security reasons and that they were now turned off at 10.36pm, the direction of the lights were still causing problems. He also feared that if the store were to close at midnight, the lights would remain on until past 12.30am. Mr Moore also explained that the lights caused shadow movement which also made it difficult to sleep. His neighbour's granddaughter who stayed with her grandma at least once a week had been upset by the "spooky effect".

Questions to the Mr Moore

In response to a question from the Licensing Manager, Mr Moore confirmed the location of his property, and that of Mrs Bolero as outlined on the location plan (Appendix 4).

There were no questions from Mr Taylor or Members of the Panel.

Mr C Moore (representing Mrs Boldero)

Mr Moore explained that the boundary of Mrs Boldero's property was less than 20 feet from the staff entrance and exit and her concerns were in relation to the noise disturbance when staff were leaving off work. The service area was used as a staff car park and doors slamming, raised voices etc caused a disturbance when staff were leaving. When the store was owned by the Co-op, staff parked in the front car park which

was further away from residential properties. She also feared that if the store opened longer, additional delivery lorries would be required.

Questions to Mr C Moore (representing Mrs Boldero)

Mr Taylor explained that he was willing, because of the concerns of Mrs Boldero, to have a condition attached to the licence (if granted) that staff who were working a shift that finished at 10pm were required to park at the front of the store.

Mr Taylor questioned Mr Moore as to whether he acknowledged that the Sub-Committee were restricted to dealing with the variation application and not the existing licence arrangements and that any additional conditions would only relate to this element of the licence. Mr Moore stated that the Sub-Committee did have the option to refuse the application. Mr Taylor highlighted that if the application was refused, there would be no conditions (other than the mandatory conditions) attached to the existing licence.

In response to a question from Councillor Lovett as to whether Mr Moore had contacted the Council's Environmental Health Department about his (and Mrs Boldero's) concerns, Mr Moore acknowledged he had not. Mr Moore took the opportunity to suggest that the Sub-Committee carry out a site visit prior to coming to any decision.

Ms V West & Ms L Copeman

Ms West concurred with the views expressed by Mr Moore stating that she too had suffered from noise disturbance when staff were leaving the store at the end of their shift. Ms Copeman explained that they had contacted the Environmental Health Department on one occasion when there was some work being carried out late at night at the store which was causing a disturbance, albeit it was the next day as no one was available in the department at midnight when the disturbance had occurred.

Ms West explained that they had concerns that selling alcohol until midnight would encourage drunken behaviour. She also had concerns that the Sunday Trading Laws, as laid down by the Government, would be breached. Ms West stated that although there would be a CCTV system in operation at the site, this would drive the problem further afield. There would also be an increase in traffic and extended deliveries.

Questions to Ms V West & Ms L Copeman

The Licensing Manager clarified that the Environmental Health Department did operate an out of hours service on a Friday and Saturday Evening. Ms West explained that the disturbance had occurred on a Sunday evening.

Mr Taylor clarified that Asda would abide by the Sunday Trading Laws and would also not open on Christmas Day, but the application had been submitted as it offered flexibility if in the future the laws were amended.

9. SUMMING UP

The Licensing Manager

The Licensing Manager drew the Sub-Committee's attention to the other letters of representation received from other persons who were not in attendance at the hearing.

The Licensing Manager summed up his case and advised the Sub-Committee that they only had the power to consider the variation application and did not have any power to amend the existing premises licence. The current licence was not subject to any conditions, other than the mandatory conditions. The application was to vary the premises licence to permit the sale of alcohol from 6am to 12 midnight, Monday to Sunday and to permit the provision of late night refreshment from 11pm to 12 midnight, Monday to Sunday. The store was permitted to open between the hours of 6am and midnight regardless of whether alcohol was sold or not.

The Licensing Manager advised that the Sub-Committee should determine the variation application with a view to promoting the four licensing objectives and in reaching their determination, should have regard to the Borough Council's Licensing Policy and the Guidance issued under Section 182 of the Licensing Act 2003.

In particular, the Licensing Manager highlighted the following extracts from the Borough Council's Statement of Licensing Policy which may be relevant to the application:

3.0 Fundamental principles

3.1 The 2003 Act requires that the Council carries out its various licensing functions so as to promote the following four licensing objectives:

- (a) the prevention of crime and disorder,
- (b) public safety,
- (c) the prevention of public nuisance, and
- (d) the protection of children from harm.

3.2 Nothing in this 'Statement of Policy' will:

- (a) undermine the right of any individual to apply under the terms of the 2003 Act for a variety of permissions and to have any such application considered on its own merits;
- (b) override the right of any person to make representations on an application.

- 3.3 Every application will be dealt with impartially and on its individual merits. The Borough Council will not refuse to grant or vary an application unless it has received a representation from a responsible authority, such as the police or an environmental health officer, or an interested party, such as a local resident or local business, which is a relevant representation.
- 3.4 Licensing is about regulating licensable activities on licensed premises and any conditions that are attached to premises licences or club premises certificates will be focused on matters which are within the control of the individual licensee or club, i.e. the premises and its vicinity.

18.0 **Conditions**

- 18.1 The Borough Council will not impose conditions unless it has received a representation from a responsible authority, such as the police or an environmental health officer, or an interested party, such as a local resident or local business, which is a relevant representation, or is offered in the applicant's Operating Schedule. Any conditions will be proportional and necessary to achieve the Licensing Objectives.

The Licensing Manager also highlighted the following extracts from the Section 182 Guidance which may be relevant to the application:

General principles

- 1.15 If an application for a premises licence or club premises certificate has been made lawfully and there have been no representations from responsible authorities or other persons, the licensing authority must grant the application, subject only to conditions that are consistent with the operating schedule and relevant mandatory conditions. It is recommended that licence applicants contact responsible authorities when preparing their operating schedules.

Licence conditions – general principles

- 1.16 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. 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, (for example, whilst beer glasses may be available in toughened glass, wine glasses may not);
- 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.

Each application on its own merits

1.17 Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.

Public nuisance

2.18 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

2.19 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and

retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low level nuisance, perhaps affecting a few people living locally, as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

- 2.20 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises. Licensing authorities should be aware of the need to avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues.
- 2.21 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.
- 2.22 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late-evening or early-morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise immediately surrounding the premises may also prove appropriate to address any disturbance anticipated as customers enter and leave.
- 2.23 Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.

- 2.24 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.

Where no representations are made

- 9.2 A hearing is not required where an application has been properly made and no responsible authority or other person has made a relevant representation. In these cases, the licensing authority must grant the application in the terms sought, subject only to conditions which are consistent with the operating schedule and relevant mandatory conditions under the 2003 Act. This should be undertaken as a simple administrative process by the licensing authority's officials who should replicate the proposals contained in the operating schedule to promote the licensing objectives in the form of clear and enforceable licence conditions

Where representations are made

- 9.3 Where a representation concerning the licensing objectives is made by a responsible authority about a proposed operating schedule and it is relevant (see paragraphs 9.4 to 9.10 below), the licensing authority's discretion will be engaged. It will also be engaged if another person makes relevant representations to the licensing authority, which are also not frivolous or vexatious (see paragraphs 9.4 to 9.10 below). Relevant representations can be made in opposition to, or in support of, an application and can be made by any individual, body or business that has grounds to do so.

Relevant, vexatious and frivolous representations

- 9.4 A representation is "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce

a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

- 9.5 It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.
- 9.6 Frivolous representations would be essentially categorised by a lack of seriousness. Frivolous representations would concern issues which, at most, are minor and in relation to which no remedial steps would be warranted or proportionate.
- 9.7 Any person who is aggrieved by a rejection of their representations on either of these grounds may lodge a complaint through the local authority's corporate complaints procedure. A person may also challenge the authority's decision by way of judicial review.
- 9.8 Licensing authorities should not take decisions about whether representations are frivolous, vexatious or relevant to the licensing objectives on the basis of any political judgement. This may be difficult for councillors who receive complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the sub-committee before any decision is taken that necessitates a hearing. Any councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.
- 9.9 It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.

Hearings

- 9.27 Regulations governing hearings may be found on the www.legislation.gov.uk website. If the licensing authority decides that representations are relevant, it must hold a hearing to

consider them. The need for a hearing can only be avoided with the agreement of the licensing authority, the applicant and all of the persons who made relevant representations. In cases where only 'positive' representations are received, without qualifications, the licensing authority should consider whether a hearing is required. To this end, it may wish to notify the persons who made representations and give them the opportunity to withdraw those representations. This would need to be done in sufficient time before the hearing to ensure that parties were not put to unnecessary inconvenience.

- 9.28 Responsible authorities should try to conclude any discussions with the applicant in good time before the hearing. If the application is amended at the last moment, the licensing committee should consider giving other persons time to address the revised application before the hearing commences.
- 9.29 Regulations made under the 2003 Act require that representations must be withdrawn 24 hours before the first day of any hearing. If they are withdrawn after this time, the hearing must proceed and the representations may be withdrawn orally at that hearing. However, where discussions between an applicant and those making representations are taking place and it is likely that all parties are on the point of reaching agreement, the licensing authority may wish to use the power given within the hearings regulations to extend time limits, if it considers this to be in the public interest.
- 9.30 Applicants should be encouraged to contact responsible authorities before formulating their applications so that the mediation process may begin before the statutory time limits come into effect after submission of an application. The hearing process must meet the requirements of regulations made under the 2003 Act. Where matters arise which are not covered by the regulations, licensing authorities may make arrangements as they see fit as long as they are lawful.
- 9.31 There is no requirement in the 2003 Act for responsible authorities that have made representations to attend, but it is generally good practice and assists committees in reaching more informed decisions. Where several responsible authorities within a local authority have made representations on an application, a single local authority officer may represent them at the hearing if the responsible authorities and the licensing authority agree. This local authority officer representing other responsible authorities may be a licensing officer, but only if this licensing officer is acting as a responsible authority on behalf of the licensing authority and has had no role in the licensing determination process. This is to ensure that the responsible authorities are represented by an

independent officer separate from the licensing determination process.

- 9.32 As noted in paragraphs 9.13 to 9.19 above, where the licensing officer is acting as a responsible authority the relevant steps should be followed to ensure that this individual has no role in the decision making process regarding the licensing determination.
- 9.33 As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation.
- 9.34 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:
- the steps that are appropriate to promote the licensing objectives;
 - the representations (including supporting information) presented by all the parties;
 - this Guidance;
 - its own statement of licensing policy.
- 9.35 The licensing authority should give its decision within five working days of the conclusion of the hearing (or immediately in certain specified cases) and provide reasons to support it. This will be important if there is an appeal by any of the parties. Notification of a decision must be accompanied by information on the right of the party to appeal. After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule. Any conditions imposed must be appropriate for the promotion of the licensing objectives; there is no power for the licensing authority to attach a condition that is merely aspirational. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety.
- 9.36 Alternatively, the licensing authority may refuse the application on the grounds that this is appropriate for the promotion of the licensing objectives. It may also refuse to specify a designated premises supervisor and/or only allow certain requested licensable activities. In the interests of transparency, the licensing authority should publish hearings procedures in full on its website to ensure that those involved have the most current information.

- 9.37 In the context of variations or minor variations, which may involve structural alteration to or change of use of a building, the decision of the licensing authority will not exempt an applicant from the need to apply for building control approval, planning permission or both of these where appropriate.

Determining actions that are appropriate for the promotion of the licensing objectives

- 9.38 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.
- 9.39 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.
- 9.40 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. Whilst this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

Hours of trading

- 10.11 The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing

authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

10.12 Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.

The Licensing Manager drew particularly attention to following extract:

10.13 Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

The Licensing Manager explained that it was not unusual for stores to make applications for hours which they were not necessarily intending to trade or were not permitted to trade under the appropriate laws. He also advised that the planning and licensing regimes involved consideration of different (albeit related) matters. Licensing committees were not bound by decisions made by a planning committee, and vice versa. There were circumstances when as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law.

The Licensing Manager requested that having regard to the representation received, the Licensing Sub-Committee were requested to consider the application, the report and take such steps as it considered appropriate for the promotion of the licensing objectives. These steps were:

- a) To grant the variation application under the terms and conditions applied;
- b) To grant the variation application with conditions that the Sub-Committee considered appropriate for the promotion of the licensing objectives;
- c) To reject all or part of the variation application.

The Licensing Manager reminded the Sub-Committee that full reasons for its decision must be given as both the applicant and objectors had a right of appeal against that decision to the Magistrates' Court.

Other Persons

Mr C Moore

Mr Moore reiterated that his concerns were in relation to the problems caused by the car park lights and disturbance from noise which he believed was unacceptable in what was a residential area. He stated that he believed that Asda had a duty of care to address these local issues.

Ms V West & Ms L Copeman

Ms West concurred with the views expressed by Mr Moore and stated that she felt that a site visit would assist the Sub-Committee in coming to their decision.

Applicant's representative

Mr Taylor, in summing up, requested that the Sub-Committee determine the application with reference to the Council's own Statement of Licensing Policy and the Guidance issued under Section 182 of the Licensing Act 2003.

Mr Taylor referred to the case of Thwaite vs Wirral Borough Council in which it was found that the Magistrates (and Wirral Borough Council) had failed to take account that there was no proper evidence and no reported complaints in regard to public nuisance or disorder.

Mr Taylor reiterated that there had been no representations from any of the Responsible Authorities, in particular the Police which he suggested should be given considerable weight. He also confirmed that he was willing for a condition to be attached to the licence, if granted, that staff who were working a shift that finished after 10pm were required to park at the front of the store.

Mr Taylor highlighted that no complaints had been made to the Environmental Health department and suggested some of the issues were not a licensing consideration. He also suggested that the concerns related to what the objectors feared or believed may happen if the application was granted and not based on any real evidence. Asda Stores had a proven track record and there was no real reason not to grant the application.

In conclusion, Mr Taylor reminded the Sub-Committee that if for any reason problems were experienced, all parties had the right to apply for the licence to be reviewed. He therefore requested that the application

be granted, in the terms as applied including the two conditions consistent with the operating schedule and consideration be given to an additional condition in that staff working on a shift that finished after 10pm, park at the front of the store.

10. OUTSTANDING MATTERS

The Legal Advisor advised that when determining the application, Members would need to consider the relevant parts of the written and oral evidence, the Borough Council's own Licensing Policy, the Statutory Guidance issued under the Licensing Act 2003 and the Human Rights Act which balanced the right of a person to earn a living and the rights of the community to enjoy a peaceful environment.

The Legal Advisor reminded the Sub-Committee that the four licensing objectives to be considered when determining the variation application, and relevant representations, were the prevention of crime & disorder, public safety, the prevention of public nuisance and the protection of children from harm. She also reiterated that there had been no representations from any of the Responsible Authorities.

The Legal Advisor stated that the main concerns of the objectors related to the possibility of crime and disorder, noise nuisance and light pollution. It was for the Sub-Committee to determine how these related directly to the application or whether some related more specifically to matters that could be explored with the Environmental Health department.

She advised that the starting point should be to consider whether the Sub-Committee were minded to grant the variation application as presented. If for any reason the answer to this question was "no", the Sub-Committee should give consideration to refusing the variation or granting the variation with any appropriate conditions to address any concerns that had been raised.

11. DECISION

The Sub-Committee retired to consider their decision in private, accompanied and advised by the Legal Advisor on specific points of law and procedure and the Senior Democratic Services Officer for administration purposes, neither of whom took part in the decision making process. On all parties returning to the room, at the request of the Chairman, the Legal Advisor explained she had offered no further legal advice to the Sub-Committee in relation to their decision.

The Chairman read out the decision and reasons for the decision as follows:

Kings Lynn and West Norfolk Borough Council, being the relevant licensing authority, received an application for a variation of a premises

licence in respect of Asda Supermarket, Langley Road South Wootton, King's Lynn, Norfolk. PE30 3UG.

During the 28 day representation period, the Council received representations from the following:

RESPONSIBLE AUTHORITIES

There were no representations received from any of the Responsible Authorities.

OTHER PERSONS

There were seven representations from other persons.

HEARING

On 15th October 2013, a hearing was held to consider the variation application. The Sub-Committee determined the variation application with a view to promoting the four licensing objectives. It considered the variation application on its own merits. In reaching its determination, the Sub-Committee had regard to the following matters:

- The relevant parts of the written and oral evidence before them;
- The Kings Lynn and West Norfolk Borough Council Licensing Policy;
- Statutory Guidance issued under the Licensing Act 2003;
- The Human Rights Act.

The Sub-Committee listened to all the evidence and submissions. It heard from:

- The Licensing Manager
- The Applicant's Representative and his witness
- Other Persons

SUMMARY OF EVIDENCE

The Licensing Manager presented his report.

The applicant's representative informed the Sub-Committee that Asda was making this application as they are able to open between 6am and 12 midnight at present and wanted to be in a position to sell their whole product range to customers during opening hours. The applicant's representative presented conditions consistent with their operating schedule which they would agree to as part of the variation. The applicant's representative addressed the issues in the representations.

Mr Moore, Ms V West and Ms L Copeman attended the hearing and raised their concerns. These concerns related principally to crime and disorder and nuisance from noise and light.

FINDINGS

The Sub-Committee found that there was no objection to the variation application from any of the Responsible Authorities. Responsible Authorities such as the Police and Environmental Health are a vital source in assessing whether there are anti-social or nuisance issues within the area.

Some local residents raised objections relating to the variation application. In their representations, phrases such as “possible crime and public nuisance” were apparent. The Sub-Committee considered much of the objections related to what people feared or believed may be the likely effects of a variation of the licence. The Sub-Committee found no clear evidence to support such fears and considered it of importance that there had been no complaints about anti-social behaviour or nuisance within the last year.

Other matters such as those relating to litter are, we consider, appropriately addressed by the applicant who would have extra litter cleaning teams on patrol. Litter dropping beyond the premises would not be the responsibility of the applicant and could be appropriately addressed by enforcement authorities.

The Sub-Committee took note of the Home Office Guidance as detailed in paragraph 10.13 in Licensing Manager’s report. It does not consider that the concerns of those objecting relate specifically to this variation application.

The Sub-Committee considered that the proposed conditions which related to CCTV and prominently displayed notices suggested by the applicant and detailed at paragraph 4 of the Licensing Manager’s report were appropriate to promote the licensing objectives. It did not consider that any further conditions were necessary or appropriate.

DETERMINATION

The Sub-Committee grants the variation application of the premises licence as applied for in respect of Asda Supermarket, Langley Road, South Wootton, King’s Lynn, PE30 3UG.

RIGHT OF APPEAL

There is a right of appeal against this decision to the Magistrates’ Court. An appeal must be commenced within 21 days beginning with the day on which you receive notification of the decision. You may wish to seek

independent legal advice from a solicitor or the Citizens Advice Bureau regarding this.

The Chairman therefore thanked everybody for their attendance and contributions and declared the meeting closed.

The meeting closed at 11.35am