

## **Licensing Act Sub-Committee - Record of Hearing held on Wednesday 28 October 2009 at 6.00pm**

**MEMBERS:** Councillor STANLEY (Chairman); Councillors GOODYEAR and Mrs SALSBURY.

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

None were received.

### **2 Application for New Premises Licence – Kings Drive Service Station, Kings Drive.**

The Chairman introduced members and officers present and detailed the procedure to be followed. The Licensing Manager outlined the report detailing the application for a new premises licence for Kings Drive Service Station, Kings Drive.

The Sub-Committee was advised that a representation from Sussex Police had been withdrawn following negotiations with the applicant and a revision to the hours for the sale of alcohol from 24 hours to 06.00 to 00.00 hours.

The Sub-Committee was referred to section 176 of the Licensing Act which prohibited certain premises from the sale or supply of alcohol, which included premises used primarily as a garage or form part of premises which are primarily so used. The approach to establishing primary use was based on an assessment of the intensity of use by customers of the premises over a reasonable period.

The redeveloped site had a mixed use of filling station and convenience store and if permission were granted, evidence would be required within a reasonable period to determine its primary use.

The applicant had submitted an analysis of projected customer flow based on historical business conducted at similar established premises. The figures gave a projected 55% of shop customers compared with 45% of fuel customers.

The applicant's barrister, Mr Light addressed the Sub-Committee and advised that the new site had concentrated on the development of the shop premises and would provide a convenience store with a large retail area in excess of 2500 sq ft selling a wide range of products.

Mr Light stated that no objections had been received from responsible authorities in respect of the application. The hours for the sale of alcohol had been revised following consultation with Sussex Police, although there was no evidence to suggest there would be any problems associated with the operation of the site. Staff training was comprehensive and on-going training records were maintained. A training DVD to ensure staff were aware of their responsibilities regarding the sale of alcohol was provided and supplemented by a quarterly quiz. The Challenge 21 initiative would be used and supported by a

refusals system. The new store had state of the art security and would operate a 24-hour recorded CCTV system.

Mr R Baker (Lockett & Co) advised the Sub-Committee that footfall figures were the accepted method for establishing primary use and the projected figures were based on the historical business use of similar premises. Evidence was provided using other company figures that had been obtained to establish the accuracy of actual figures when compared with customer flow projections made.

Written representations had been received from local residents living in the vicinity and Mr N Waterson MP as detailed in the report.

Councillor C Belsey addressed the Sub-Committee on behalf of local residents and stated that the main objection related to the sale of alcohol until midnight. Other outlets closed at 11.00pm and residents remained concerned that it could potentially lead to anti-social behaviour and an increase in drink driving. He queried whether any additional form of security was proposed on a Friday and Saturday. Reference was also made to the monthly customer projections which in his opinion seemed high.

The Sub-Committee also acknowledged and took into account those letters of representation submitted from interested parties not present at the hearing.

Mr Light stated that a considerable investment had been made by the applicants and as experienced operators with 240 sites operating the "On the Run" shops the evidence presented in respect of primary use was based on sound projections. He reiterated that there was no evidence to suggest that anti-social behaviour had or would occur at the site which would warrant additional security measures other than that proposed within the operating schedule and as required under Health and Safety legislation.

In closing Mr Light made reference to a recent Judicial Review of a Magistrates Court decision (Thwaites v Wirral Borough Magistrates' Court). The High Court had quashed a Magistrates' decision to reduce extended hours sought and granted by Sub-Committee on the basis that a decision had been made on speculation of what might happen and was not evidence based.

The Sub-Committee then retired to consider and determine the application having regard to the representations submitted and the further evidence presented at the meeting, the four licensing objectives and the Council's Statement of Licensing Policy.

Having taken into account all the relevant considerations the Sub-Committee announced the decision as follows.

**RESOLVED:** That the new premises licence application in respect of Kings Drive Service Station be granted as set out in the attached appendix A.

### **3 Application for Variation of a Premises Licence – French's Deux, Bolton Road.**

The Chairman introduced members and officers present and detailed the procedure to be followed. The Licensing Manager outlined the report detailing the application for a variation of a premises licence for French's Deux, Bolton Road.

The Sub-Committee was advised that Sussex Police had negotiated an amendment to the hours of operation and agreed with the applicant a number of conditions to be attached to the licence if granted. Subject to the agreement of all parties present the amended application would satisfy the concerns of Sussex Police regarding negative cumulative impact.

Environmental Health had also requested conditions be attached to the licence to overcome concerns raised in respect of public nuisance.

Inspector R Barrow and Mr G Lucie (Barrister) advised the Sub-Committee that the hours for the sale of alcohol had been revised to 12.00am Sunday to Wednesday and 1.00am Thursday to Saturday. The hours for recorded music would match the hours for the sale of alcohol. Conditions to be attached to the licence related to the installation of CCTV, the use of polycarbonate glasses, SIA Registered Door Supervisors and the requirement to join Nightwatch.

Written representations had been received from the Sherwood Court Residents' Association as detailed in the report.

Mr D Mitchell (Sherwood Court Residents' Association) addressed the Sub-Committee on behalf of local residents and stated that the reduced hours and conditions proposed were a reasonable compromise. Residents however remained concerned regarding the level of general anti-social behaviour in the town centre and the surrounding area.

The applicant Mr S Foot and Mr J King (Licensing Consultant) addressed the Sub-Committee on the proposals. Following further discussion on the requirements for the use of polycarbonate glasses and the times when door supervisors would be required, the application was further amended to exclude Thursdays from the times applicable for Fridays and Saturdays. Mr King also accepted the conditions proposed by Environmental Health.

The Sub-Committee then considered the revised application having regard to the representation submitted and the further evidence presented at the meeting, the four licensing objectives and the Council's Statement of Licensing Policy. Having taken into account all the relevant considerations the Sub-Committee announced the decision as follows.

**RESOLVED:** That the variation application in respect of French's Deux, Bolton Road be granted as set out in the attached appendix B.

The meeting closed at 8.45p.m.

**N Stanley  
Chairman**

## Appendix A

# Eastbourne Borough Council

## Decision Notice

### Licensing Act Sub-Committee held on Wednesday 28 October 2009

- Applicant: ROC UK Ltd
- Premises: Kings Drive Service Station  
Kings Drive  
Eastbourne
- Reasons for Hearing: Relevant representations received from interested parties under the public nuisance, prevention of crime and disorder, public safety and the protection of children from harm licensing objectives.
- Parties in attendance: Applicant and representatives: Mr R Light (Barrister), Mr R Baker (Lockett & Co) and Mr M Hodgskin (ROC UK Ltd).
- Interested Parties: Mr N Russell and Councillor C Belsey.
- Licensing Authority:  
Miss K Plympton (Licensing Manager) and Mr G Johnson (Regulatory and Litigation Lawyer).
- Decision made: To grant the new premises licence as follows:
- Sale of Alcohol:**
- Monday – Sunday                      06.00 – 00.00 hours
- Late Night Refreshment:**
- Monday – Sunday                      23.00 – 05.00 hours
- Open to the Public:**
- Monday – Sunday                      00.00 – 00.00 hours
- Subject to the applicable mandatory conditions prescribed by section 19 of the Licensing Act 2003:
- Reasons for Decision: The Sub-Committee has granted the application for a new Premises Licence subject to the conditions and hours specified having given due weight to the evidence placed before it, as well as the regulations and guidance under the Licensing Act 2003 and the licensing objectives.
- The Sub-Committee acknowledged the concerns of local resident but were satisfied with the submissions made in support of the application and the measures offered by the applicant to promote the licensing objectives.

To affirm that the premises were not excluded from the sale of alcohol under the relevant provisions of the Licensing Act 2003, the Sub-Committee requested that once trade has been established for a reasonable period, the applicant is required to submit actual figures to support the projected customer flow figures which had been submitted.

Date of Decision: 28 October 2009  
Date decision notice issued: 18 November 2009

A written or electronic copy of this Notice will be publicly available to all Parties and published on the Council's website.

### **RIGHT OF APPEAL**

Under the provisions of S.181 and Schedule 5 of the Licensing Act 2003, there is a right of appeal against the decision of the Licensing Sub-Committee, should you be aggrieved at the outcome.

This right of appeal extends to the applicant in the case of refusal or restrictions on the licence, or the imposition of conditions to the licence. The right of appeal also extends to persons who have made representations where the licence has been granted, or that relevant conditions have not been imposed on the licence.

Full details of all the rights of appeal can be found within Schedule 5 of the Act. If parties wish to appeal against the Sub-Committee's decision, this must be made to the Magistrates Court, Old Orchard Road, Eastbourne, BN21 1DB within 21 days of receipt of this decision notice.

## Appendix B

# Eastbourne Borough Council

## Decision Notice

### Licensing Act Sub-Committee held on Wednesday 28 October 2009

Applicant: Mr Stephen Foot

Premises: French's Deux  
6 Bolton Road  
Eastbourne

Reasons for Hearing: Relevant representations received from responsible authorities and interested parties under the public nuisance and prevention of crime and disorder objectives.

Parties in attendance: Applicant and representatives – Mr S Foot and Mr J King (Licensing Consultant).

Responsible Authorities:  
Sussex Police – Inspector R Barrow, Mrs J Irving (Licensing & Public Safety Manager) and Mr G Lucie (Barrister).

Interested Parties – Mr D Mitchell (Sherwood Court Residents' Association).

Licensing Authority:  
Miss K Plympton (Licensing Manager) and Mr G Johnson (Regulatory and Litigation Lawyer).

Decision made: To grant the variation of the Premises Licence as follows:

#### **(1) Standard hours:**

##### **Sale of Alcohol: (on & off the premises)**

|                   |                     |
|-------------------|---------------------|
| Sunday - Thursday | 12.00 – 00.00 hours |
| Friday & Saturday | 10.00 – 01.00 hours |

##### **Regulated Entertainment: (indoor)**

Recorded music:

|                   |                     |
|-------------------|---------------------|
| Sunday - Thursday | 12.00 – 00.00 hours |
| Friday & Saturday | 10.00 – 01.00 hours |

##### **Open to the Public:**

|                   |                     |
|-------------------|---------------------|
| Sunday - Thursday | 12.00 – 00.30 hours |
| Friday & Saturday | 10.00 – 01.30 hours |

#### **(2) Non-standard hours:**

Finish time to be extended for opening hours, sale of alcohol and regulated entertainment on New Year's Eve from the end of permitted hours until their commencement on the following morning.

Subject to the following conditions (in addition to applicable mandatory conditions prescribed by section 19 of the Licensing Act 2003):

- i) Regular checks shall be undertaken outside the premises and general area to ensure no noise nuisance is likely to be caused to residents in the vicinity.
- ii) All windows and doors shall be kept shut when all forms of regulated entertainment are taking place, except for background music, other than for access/egress to/from the premises.
- iii) All forms of regulated entertainment should allow full control of music output and should be played through a sound limiter.
- iv) By 1 December 2009, CCTV, monitors and appropriate recording equipment shall be installed, operated and maintained to the specification required by Sussex Police.
- v) Security Industry Authority registered Door Supervisors shall be employed and on duty at the premises on Fridays and Saturdays from 20.00 hours until closing time.
- vi) On Friday and Saturdays after 22.00 hours all beverages shall be served in polycarbonate containers.
- vii) The Licensee shall join and remain an active member of Nightwatch.

Reasons for Decision: The Sub-Committee has granted the application for a variation of the Premises Licence subject to the conditions and hours specified having given due weight to the evidence placed before it, as well as the regulations and guidance under the Licensing Act 2003 and the licensing objectives.

The Sub-Committee heard that the applicant and Sussex Police had reached an agreement to amend the hours of operation to satisfy the concerns raised in respect of negative cumulative impact. The conditions to be attached to the premises licence, in addition to those required by Environmental Health had also been discussed and agreed as necessary to promote the licensing objectives.

The Chairman of the Sherwood Court Residents' Association in accepting the amended application as a reasonable compromise had commented on the level of general anti-social behaviour in the town centre and the surrounding area which remained a continued concern for local residents.

Date of Decision: 28 October 2009

Date decision notice issued: 24 November 2009

A written or electronic copy of this Notice will be publicly available to all Parties and published on the Council's website.

### **RIGHT OF APPEAL**

Under the provisions of S.181 and Schedule 5 of the Licensing Act 2003, there is a right of appeal against the decision of the Licensing Sub-Committee, should you be aggrieved at the outcome.

This right of appeal extends to the applicant in the case of refusal or restrictions on the licence, or the imposition of conditions to the licence. The right of appeal also extends to persons who have made representations where the licence has been granted, or that relevant conditions have not been imposed on the licence.

Full details of all the rights of appeal can be found within Schedule 5 of the Act. If parties wish to appeal against the Sub-Committee's decision, this must be made to the Magistrates Court, Old Orchard Road, Eastbourne, BN21 1DB within 21 days of receipt of this decision notice.