



LICENSING SUB-COMMITTEE

MEETING : Monday, 22nd April 2013
PRESENT : Cllrs. Randle, C. Witts and Gilson

Also in Attendance

Alexandra Reece, Solicitor
Rebecca Tuck, Licensing Enforcement Officer
Lisa Jones, Food Safety and Licensing Service Manager
Tony Wisdom, Democratic Services Officer (Secretary)

APOLOGIES : None

29. ELECTION OF CHAIR

Councillor Randle was elected Chair of the meeting.

30. INTRODUCTIONS AND PROCEDURES

The Chair introduced the Members of the Sub-Committee and officers in attendance and invited the Applicant and Constabulary representatives to introduce themselves. The Chair explained the procedures that would be followed during the meeting which were also summarised in Appendix 6 to the report.

In addition to the Members of the Sub-Committee and Council officers in attendance, the following were present:

Wm Morrison Supermarkets Ltd

Clare Johnson, Partner, Grosschalks Solicitors,
Kelly Nichols, Licensing Manager
Simon Lambert, Loss Prevention Manager

Gloucestershire Constabulary

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Paul Trott, Solicitor
Inspector Steve Wood, Gloucester Licensing Inspector
PC Andrew Cook, Licensing Manager
David McFarlane, Senior Harm Prevention Officer

31. DECLARATIONS OF INTEREST

No declarations were made on this occasion.

32. APPLICATION UNDER SECTION 17 OF THE LICENSING ACT 2003 BY WM MORRISON SUPERMARKETS LTD IN RESPECT OF MORRISONS, METZ WAY, GLOUCESTER

The Licensing and Enforcement Officer presented a report detailing an application by Wm Morrison Supermarkets Ltd in respect of Morrisons, Metz Way, Gloucester GL4 4RT under Section 17 of the Licensing Act 2003 to which a representation had been made by Gloucestershire Constabulary.

The application was for the retail sale of alcohol (off sales only) Monday to Sunday (inclusive) from 06.00 to Midnight.

Details of the application were contained in Appendix 1 to the report.

The Sub-Committee had also received the following information –

A plan showing the layout of the premises – Appendix 2

A map showing the location of the premises – Appendix 3

Copy of a representation from Gloucestershire Constabulary – Appendix 4

Morrison's response to undertake security to a certain level during a trial period whilst risk assessment is carried out – Appendix 5

Procedure to be followed at the hearing - Appendix 6

Mandatory conditions to be attached to any licence granted – Appendix 7

Late information comprising a statement by Inspector Wood, crime statistics and map together with further correspondence between the Constabulary and Morrisons had been circulated.

The Licensing and Enforcement Officer referred Members to Appendix 4, the representation from Gloucestershire Constabulary and the late material which had been circulated.

She summarised the application and referred Members to the relevant sections of the City Council's Licensing Policy Statement.

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Members were advised that having considered the application, any relevant representations, the legislative provisions, the Council's Statement of Licensing Policy and the Home Secretary's Guidance, they had the following options as considered appropriate and proportionate to the promotion of the licensing objectives:-

- (a) To accept the application and attach conditions as consistent with the operating schedule.
- (b) To accept the application and modify the conditions of the licence which includes altering, omitting or adding new conditions.
- (c) To reject the whole or part of the application.

Members were reminded of the statutory licensing objectives:-

- (i) The prevention of crime and disorder
- (ii) Public safety
- (iii) The prevention of public nuisance
- (iv) The protection of children from harm

There were no questions of the Officer.

Statement by the Applicant

Clare Johnson, for the Applicant, advised Members that Wm Morrison Supermarkets Ltd operated over 500 stores and had extensive experience in retail sale of alcohol. Compliance with the law was not an aspiration but viewed as essential by the Company who had not been the subject of a single review or prosecution in the last 3½ years that Ms Johnson had represented the company despite operating in some densely populated and highly challenging areas.

She outlined the measures proposed in the operating schedule and observed that no objection or representations had been received from the public, Councillors, the Licensing Authority, Environmental Health or Child Protection Officers. She noted that the sole issue before the Sub-Committee was the regulation of the number of security guards to be required.

Ms Johnson advised that she had met with the Police to discuss the matter but it was not the Applicant's company policy to agree to accept security guard conditions but to undertake risk assessments and react accordingly to those.

She advised that Uxbridge Road in Ealing was the only Morrison store in the country with a condition relating to security guards. She suggested that the Applicant would accept a condition requiring continuous risk assessment and the appointment of one guard at the times indicated by the assessment.

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She outlined the Police requirement and advised that would cost in the region of £120,000 per year. It would result in the store having the highest level of security in any Morrison's store in the country. It would be 60 per cent higher than Hartcliffe in Bristol and 30 per cent higher than Peckham.

She advised that she was not present to save money but to convince the Sub-Committee that the Applicants knew their business and if that level of security was indicated by the risk assessments it would be implemented.

The levels of security staff requested by the Police would impact on the number of other employees at the store which was expected to be around 300. She confirmed that the Company would fulfil its obligations to prevent crime and disorder.

Ms Johnson then referred to the Police representation and she noted that the Police had maintained that Morrisons did not undertake risk assessments in advance of store opening.

She stated that this view was both naive and inconceivable as before the opening of any store the company undertook extensive risk assessment within a two mile radius looking at factors such as other stores, crime statistics and details of the area. She added that plain clothes security staff were deployed for a few days after opening of a new store.

She noted that the Police had stated that Morrisons staff were specifically instructed not to become involved in incidents where their personal safety maybe at risk including detaining offenders. She advised that all staff were trained and a system of coded Tannoy messages was operated in stores.

She asked Members to consider the purpose of the proposed condition and noted that the Licensing Act sought to regulate licensable activities not other areas of crime. She highlighted that the Council's Licensing Policy Statement refers to this fact. The condition therefore must be in relation to the sale of alcohol and asked what evidence supported the deployment of three security officers to regulate the sale of alcohol.

Ms Johnson noted that the Police maintained that crime would migrate from the Asda store which was 0.75 miles distant. She noted that Asda Gloucester had recorded 32 instances of theft of alcohol in one year which was less than three per month when one million people would be expected to use a store of that size in that period. She noted that Asda was only required by condition on its licence to have a security guard between midnight and 6.00 am on the 14 occasions when alcohol was permitted to be sold for 24 hours.

She referred to the absence of conditions requiring security guards imposed on various other stores in the City and noted that it was in the Applicant's interest to regulate the store and it would do so. Morrisons knew their business and had much experience of operating in challenging areas and she noted that if the Police argued that the other areas in which Morrisons stores are located did not compare to the subject area they should have looked at Wood Green or Hartcliffe Morrisons stores.

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She confirmed that spirits over 500ml were already tagged and that counter sales of spirits were impractical in a store of this size. She confirmed that the Applicant would be prepared to participate in Shopwatch radio link and to work with Asda to promote the licensing objectives. She had contacted staff at Morrisons store in Abbeydale who were not aware of the SARA scheme. She noted that any concerns regarding that store were in relation to youths gathering in the car park which she understood was as a result of the proximity of the store to the nearby community centre rather than the sale of alcohol.

Mr Trott, for Gloucestershire Constabulary, referred to the research undertaken and the inference that risks had been assessed but not shared with the Police. He was advised that the pre-opening risk assessment was confidential to Morrisons and there was no necessity to disclose its content.

Inspector Wood asked if risk assessments would be undertaken after opening of the store and was advised that they would.

Mr Trott asserted that the Police had been misled into believing that a risk assessment would not be carried out until after the store had opened.

Ms Johnson noted that Morrison's offer to accept a condition requiring that risk assessments be undertaken had been rejected.

Councillor Witts asked about access to the site and was advised that that was a planning matter.

Councillor Gilson asked for clarification of the term 'continuous' applied to risk assessments and was advised that risk assessments are carried out daily in the first instance when a store opens and weekly thereafter.

Councillor Witts asked why Morrisons had withheld the risk assessments they had undertaken. He was advised that Morrisons would be happy to share future assessments with the Police. They wanted dialogue with the Police and would discuss levels but were not prepared to share the pre-opening assessment.

He asked if the Company were keen to develop community relationships and was advised that was done in a number of stores which worked with local councillors and external bodies.

Councillor Randle asked if all staff were security trained and SIA guards would be used if needed and was advised that this would be the case if the risk assessment indicated a need.

Statement by Gloucestershire Constabulary

Paul Trott, for Gloucestershire Constabulary, welcomed Morrison's investment in the City and the development of the site which had been an eyesore. He noted the proximity of the Asda store and the Tredworth and Barton Street localities and referred to the crime statistics which had been circulated.

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He noted the poor record of the Asda store which was being addressed by a number of measures including the presence of uniformed security staff which the Constabulary believed provided a deterrent to crime. It was predictable that Morrison's would be perceived as a soft target if there was no uniformed presence.

The Constabulary acknowledged that Morrisons stores were well run and operated in a manner appropriate to the stores' locations but believed that the Metz Way store would be more challenging.

The CCTV and self scan proposals were welcomed but Mr Trott believed that it was reasonable and proportionate to ask Morrisons to address the issue of uniformed security guards.

Ms Johnson noted that Asda did not have a condition requiring security guards between 06.00hrs and midnight. Inspector Wood stated that Asda had made a commitment to put in measures voluntarily and if it does not it will face a review. He acknowledges that Asda were acting responsibly in that regard. Ms Johnson asked why the Police could not accept that Morrisons were responsible operators and that a condition would not be necessary.

She also asked where the Police had obtained the incorrect impression regarding risk assessments and she was advised it had come out of the meeting with Morrisons representatives and the Police.

Ms Johnson asked what enquiries the Police had made. PC Cook advised that he had made a number of enquiries of stores in the South West mainly in suburban locations. He noted that supermarkets could employ security guards who were not SIA badged. Ms Johnson responded that if the requirements for security staff became a condition on the premises licence it would automatically follow as a mandatory condition that security guards be SIA registered

Councillor Witts enquired about access to the site and was advised that there was one vehicular and two pedestrian accesses.

In answer to a question from Councillor Randle it was confirmed that the statistics circulated referred to alcohol-related theft reported to the Police. Simon Lambert confirmed that Morrisons reported all detected alcohol thefts to the Police.

The Licensing and Enforcement Officer asked if there was any indication of the times of day the offences had been committed.

The Chair adjourned the hearing while an answer was prepared.

Mr Trott advised the following:-

Morrisons Abbeydale:- 1 @ 11.00hrs, 1@ 11.30hrs 5 between 12.00 and 18.00hrs
Asda, Gloucester:- 6 between 06.00 – 12.00hrs
10 between 12.00 -18.00hrs
16 between 18.00 – Midnight

Final Statements

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Licensing and Enforcement Officer

The Licensing and Enforcement Officer made a closing statement reminding Members to consider the relevant facts concerning the application, the guidance and representations received and to make a decision based on the options at paragraph 2.1 of the report. She drew Members' attention to the Court of Appeal case at paragraph 7.1 (Thwaites v. Wirral Borough Magistrates Court).

Gloucestershire Constabulary

Mr Trott summed up his case and advised Members that it was not the intention of the Constabulary to frustrate the economic development of the City but rather to prevent crime and disorder. He asked Members to accept the reasonable and proportionate requests of the Police as he believed that a clear need had been demonstrated.

The Applicant

Ms Johnson summed up her case and asked Members to make their decision based on the evidence before them. She reminded Members of the Court of Appeal case where magistrates had made a decision to impose conditions without the necessary evidence that those measures were necessary to promote the licensing objectives. She noted that the only evidence was a comparison with the Asda store which stocks a different range of goods including clothing and high price range electrical goods. That store had recorded 32 alcohol thefts in one year which was less than three per month.

She asked if the Police request for up to three security guards was a reasonable and proportionate response.

She believed that the Police could have looked at Morrison's Wood Green store which was their most challenging store and yet had never been required to undertake a risk assessment or been subject to a review. She said there was no evidence to suggest that Morrisons were not a responsible company and she said that Morrisons wished to work with the Police. She pointed out that there was a provision in the Operating Schedule to risk assess the need for security guards and that Morrisons would be prepared to provide the assessments to the licensing Authority and the police on request.

She stated that if the company did not co-operate and there was sufficient evidence a condition requiring security guards could be imposed but to do so now would be premature in the extreme.

Decision

The Sub-Committee withdrew to consider their decision. Upon their return, the Chair read the following:-

Having considered the application, any relevant representations, the statutory provisions, the Council's Statement of Licensing Policy, the Home Secretary's

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Guidance, taking into account the licensing objectives and listened carefully to the presentation of the report of the Licensing and Enforcement Officer, the presentations of the parties and the responses to questions, the Sub-Committee has determined:-

To grant the licence in accordance with the application but with a condition requiring the applicant to risk assess the need for SIA guards at least once per quarter and to provide a copy of the assessments to the Licensing Authority and the Police on request.

Reasons

1. To identify any further measures that may be required to promote the licensing objectives.
2. The Committee considered that the Police evidence was insufficient to support the condition they had requested. (end)

Time of commencement: 18:45 hours

Time of conclusion: 20:50 hours

Chair