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9th December 2008

APPLICATION FOR GRANT OF A PREMISES LICENCE – “SAINSBURY’S SUPERMARKETS LIMITED”, BONDGATE, OTLEY, LEEDS LS21 3AB

On 1st December 2008, the Licensing Sub Committee heard an application by Sainsbury's Supermarkets Ltd, 33 Holborn, London EC1N 2HT for the grant of a Premises Licence in respect of the Sainsbury's Supermarket premises, Bondgate, Otley

The applicant sought the following:

Sale and supply of alcohol (off the premises):

Sunday to Saturday 06:00 hours until 22:00 hours

Late Night Refreshment

Sunday to Saturday 23:00 hours until 24:00 hours

The applicant indicated the premise was to be open to the public 24 hours per day.

This letter represents the formal decision of the Sub Committee in respect of the application.

Preliminary Procedural Issues

The Sub Committee considered preliminary matters of a purely procedural nature. There were no declarations of interest made. The applicant indicated some amendments had been made to the application and the Sub Committee resolved to deal with these within the substantive part of the hearing. The Sub Committee therefore decided that the procedure for the hearing would not be varied.

The Sub Committee also considered if the public should be excluded from any parts of the hearing and decided to exclude the public from that part of the hearing where Members would deliberate on the application as presented. This would allow them to have a full and frank discussion on all matters put before them and this fact outweighed the public interest in not doing so.



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Prior to the hearing the Sub Committee had considered the Licensing Officers Report which contained a copy of the application as submitted by the applicant. The report also included representations from LCC Environmental Health Services (LCC EHS) and West Yorkshire Police (WYP) as responsible authorities. Letters of representation had also been received from the following local residents and these were also included:

Mr T Keddle	D, R, L & C Tucker	S Leather
Mr C Martin	A & C Watson	J Simpson
Ms T Weatherhead	S Dunworth	N K Scrivener
Mr A R Grey	J Close	M Yates
Mr T & Mrs H Wilkinson	N Atkinson	R Laidler
K V Beaumont	M & S Fairholme	I Watkinson
Mrs S Cullen	R Fairfoot	Dr G N Chambers
S Smith & L Vaughan-Birch	M J Atkinson	R Lachman
	J, M, & M Osmont	T Deignan

Mr T Wilkinson submitted a further late letter of representation after the despatch of the agenda and this had been despatched to all parties prior to the hearing.

Not all parties to the application attended the hearing. The Sub Committee noted representation submitted by LCC EHS had been withdrawn and the applicant had reached agreement with WYP on all but the wording of one proposed condition. The responsible authorities therefore did not attend. The written representations of those local residents who did not attend were considered in their absence. The following did attend the hearing:

Mr R Botkai, solicitor for the applicant
Mr J Baker, Manager of Sainsbury's store, Otley

Councillor R Downes , local ward Councillor Otley and Yeadon
Councillor C Campbell, local ward Councillor for Otley and Yeadon (observing)
Ms Tamara Weatherhead
Mr Tony Grey
Ms Sue Cullen
Mr Tim Deignan
Ms Jane Close

The Sub Committee did not set a time limit for the parties to make their case. The Sub Committee then went on to consider the application.

The Hearing

At the commencement of the hearing, Mr Botkai on behalf of the applicant addressed the Sub Committee and explained the amendments made to the application as :

Hours for the sale of alcohol

Sunday to Saturday 07:00 hours until 22:00 hours

Except for the 2 weeks prior to and one following Christmas when the applicant sought 06:00 hours until 22:00 hours)

Late Night Refreshment – application now withdrawn

Opening hours – 24 hours opening included on all Sainsbury's applications, however store opening hours did not form part of the licensing application

The Sub Committee noted receipt of an e-mail from Sgt A Pickersgill of WYP setting out the agreements reached between the applicant and WYP, however noted that Mr Botkai had not seen this e-mail and afforded him the time to read it. Mr Botkai noted the wording of Condition No.2 had not changed as he thought had been agreed.

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In determining the application the Sub Committee took into account all written submissions contained within the report which had been circulated to the Parties prior to the hearing. After considering the evidence and submissions the Sub Committee needed to satisfy itself that granting the licence would promote the licensing objectives. In reaching this decision the Sub Committee had regard to the provisions of the Licensing Act 2003, guidance under Section 182 of that Act and the Council's own Licensing Policy.

In particular the Sub Committee took into account Sections 17 & 18 of the Act because these were the most relevant to the application and Chapter 8 of the Guidance relating to the four licensing objectives. The Sub Committee then went on to consider, but not exclusively, the following paragraphs of the Licensing Policy as the Sub Committee took the view these paragraphs had bearing on the application:

12.6 to 12.11 Crime and Disorder
12:22 to 12:32 Public Nuisance

Reasons for the decision

The Sub Committee, whilst noting Mr Botkai's comments regarding the wording of Condition No. 2 (*in italics*), noted the applicant had come to an agreement with WYP on the following measures proposed in order to address the prevention of crime and disorder objective of the Licensing Policy:

- 1) A "Challenge 21" (or equivalent scheme) shall be adopted so that all cashiers are trained to ask any customer attempting to purchase alcohol who appears to be under 21 years for evidence of age. This evidence shall be photographic, such as passport or photographic driving licence, until other effective identification technology (for example thumb print or pupil recognition) is adopted by the licence holder. All cashiers will be instructed through training that a sale shall not be made unless this evidence is produced.
- 2) *All refusals of sales of alcohol will be recorded in a refusals register.* All cashiers shall be instructed through training to record all refusals of sales of alcohol in a refusals register. The register will contain the following details:- the time, day and date the refusal was made, the name of the staff member refusing the sale, the description of the young person attempting to purchase and details of the alcohol the young person Attempted to purchase. The refusals register will be produced upon request to the police or a relevant officer of a Relevant Authority
- 3) Records will be maintained at the store containing information about the training of any persons who may make a sale of alcohol including the date of the training and the nature of training undertaken. The relevant records will be produced on request to a Police Officer or a relevant officer of a Responsible Authority

The Legal Adviser also referred to the measures outlined in Box P of the application form – which outlined measures the applicant proposed to undertake to address the licensing objectives should the application be granted – and referred to those proposed to address Crime and Disorder which included the installation of CCTV.

The Sub Committee permitted Mr Barker to clarify that tills issued a prompt at the point of alcohol purchase. Currently a person appearing to be under 21 purchasing alcohol at a till would be asked for check 21 identification by the cashier. If none was forthcoming the sale would be refused and the refusal logged in the register. Mr Botkai explained Condition 2 was contested as the applicant as licence holder could only train staff and put conditions in place, the licence holder could not physically put the refusals into the register and tills. Mr Botkai stated the applicant had agreed to the wording "will record refusals" however the e-mail from Sgt Pickersgill still stated "all refusals"

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The Licensing Officer reported that Mr Fairfoot, a local resident, had indicated his wish to withdraw his written representation

The Sub Committee then went onto consider the representations made by local residents.

The Sub Committee considered the submission made by local ward Councillor R Downes who had been requested to speak on behalf of Ms R Laidler who had submitted a written representation stating her concern about late night sales of alcohol. He reported that signs outside store indicated the store opening hours as 08:00 until 20:00 hours Monday, Tuesday, Wednesday and Saturday, 08:00 until 21:00 hours Thursday and Fridays and 10:00 until 16:00 hours Sundays and noted that this licensing application sought hours beyond those opening hours. He stated the residents felt the licensing hours were inappropriate and should be limited to those of the opening hours. He suggested that Temporary Event Notices would be a better way of dealing with those occasions when the store wished to open late. Councillor Downes noted the withdrawal of the request for Late Night Refreshment and added that no planning application had been made for a café facility in the store.

Mr Botkai interrupted this submission stating the issue of a café was a planning matter and he was reminded the Sub Committee were aware of this.

Councillor Downes continued turning to the issue raised in the letter regarding “yob culture” and disturbances in the locality. He described the locality as a quiet residential area at night with a number of elderly residents nearby. As such he felt the store delivery hours were excessive and should be limited to one hour prior to opening and one after closing. He informed the Sub Committee that Otley was the subject of a Designated Public Places Order and this store lay within the DPPO area, as such the residents were concerned about people drinking outside the store. He noted the applicant stated CCTV would be installed and queried whether this would cover the full extent of the car park as people who had bought alcohol or had been refused sales could congregate there. He had seen CCTV at the store but only at the entrance so far.

Councillor Downes was reminded to concentrate on the contents of Ms Laidlers' letter and not to bring new evidence to the hearing. He responded by saying his comment regarding vandalism of the signs advertising the store opening hours supported Ms Laidlers' statement on yob culture. He concluded stating he was simply concerned about the effects of people buying cheap alcohol

Noting the conclusion of Councillor Downes' representation, and as the Sub Committees had no questions; Mr Botkai was permitted to ask a question. In response to his query as to whether Ms Laidler was an employee of Sainsbury's, Councillor Downes stated he did not know, however another local resident confirmed she was not.

The Sub Committee then heard representation from Ms S Cullen who began by stating the local residents felt they had made powerful objections based on all four licensing objectives in order to offset further sales of alcohol in Otley. Given the fact that young children lived around the supermarket local residents felt they could accept restricted hours for the sale of alcohol to match the store opening hours if that could be achieved. She stated she found the proposed early morning and late night alcohol sales very distressing as she lived next door to the store. Ms Cullen felt the sale of alcohol should be restricted to the store opening times given the ongoing crime and disorder and public nuisance in the locality

Mr T Deignan then addressed the hearing and confirmed the area experienced incidents of anti social behaviour already. Drunks could be seen in the streets throwing glasses on Saturday nights and residents could find broken shop windows on Sunday mornings. He

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stated there was a Pubwatch scheme in Otley, which did extend to the Wharfe-Ale off-licence and he believed the scheme did prevent the sale of alcohol to drunks. Sainsbury's had the potential to sell alcohol to these people particularly on the long summer evenings, which would result in more drunks and more vandalism. He did not believe the proposed Check 21 system would work

The Sub Committee queried whether this information was based on evidence and he responded that this would happen. It was a fact that there would be cheap alcohol very close to the pubs. It was a fact that if Sainsbury's did not participate in Pubwatch people who could not gain access to the pubs would be able to buy alcohol there. He stated his support for the suggestion to restrict the sales to the store opening hours as this would prevent the scenario he had described.

The Sub Committee then heard from Ms J Close who stated her support for the suggestion to restrict alcohol sales to the store opening hours. She drew Members' attention to statistics recently published showing that incidents of cirrhosis had increased by 45%. She described Otley as a small town, and this was a very large supermarket and she suggested it would be detrimental to children having alcohol so close

Mr T Grey then addressed the hearing and stated off-sales of alcohol at supermarkets were very cheap and one of Sainsbury's' most recent offers equated to 47p per can as 15 cans sold for £6.99. He was concerned that cheap alcohol and anti social behaviour went hand in hand. Pub sales were heavily regulated and pub sales had dropped 50%, but supermarket sales were not so regulated and their sales had increased. He agreed the Check 21 system was a measure against anti social behaviour, but he suggested that so was pricing and 15 cans for £6.99 flew in the face of the Governments' attempt to reduce alcohol induced anti social behaviour.

Mr Grey reported that he was a licensee, and Chair of the Otley Pubwatch scheme. He stated that far more alcohol was sold through the supermarkets and off licences but only Wharfe Ale was a member of Pubwatch. He said it was significant to say that people with a propensity towards violent acts became more violent with alcohol and when challenged. Pubwatch did challenge people. It also had a "banned list" whereby Pubwatch members refused alcohol sales to people on the list. Supermarkets had no idea who they were selling to, especially when selling alcohol in crates. He stated it was a compelling case for the Licensing Authority and Central Government to stand up to multiple supermarkets who sold alcohol irresponsibly

Mr Botkai made to interject at this point and was reminded that he could address the comments of the objector during his representation, however the Sub Committee also reminded Mr Grey to make his representation to this application specifically and not general comments.

Mr Grey concluded by stating that on-sales premises had had many drinks promotions banned through regulation but off sales premises did not. In response to questions from the Sub Committee Mr Grey confirmed he was suggesting the store become a member of Pubwatch if this licence was granted however Mr Deignan added that being a member of Pubwatch may not effectively prevent nuisance or people buying alcohol by proxy and he believed restricting the sales would be more effective.

The Sub Committee then went on to hear the representation made by Mr Botkai on behalf of the applicant. He explained that the original application for Late Night Refreshment and alcohol sales until midnight was the standard application made for all 850 Sainsbury's stores. This provided flexibility for the managers but did not mean those hours would be fully utilised

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It had not been the intention to open a café, rather that having realised the store intended to include a coffee machine and seasonal hot food such as roast chestnuts, he became concerned the store would not be licensed to provide these, hence the Late Night Refreshment request. Mr Botkai stated there were no planning restrictions on store opening hours but he confirmed the intention to operate as follows:

Monday, Tuesday, Wednesday, and Saturday 08:00 until 20:00 hours

Thursday and Friday 08:00 until 21:00 hours

Sunday 10:00 until 16:00 hours

He confirmed the applicant still sought 07:00 until 22:00 hours although this store would not trade till then.

Mr Botkai suggested it was very difficult for the local residents to argue this Sainsbury's store was the cause of current problems. He had explained the powers available to them through the Review procedure if they found the store did create problems in the future prior to this hearing, however he hoped residents would contact Mr Barker first. Should they remain unhappy; they had the power to seek a Review on production of relevant evidence. Mr Botkai commented the residents objections had been submitted when the applicant had sought midnight closing and this was no longer the case. He reiterated that EHS had withdrawn their representation which had not been made on licensing terms and discussions with WYP had brought about agreement on all but the wording of one condition.

Turning to the residents comments and the licensing objectives, Mr Botkai responded to the following:

Children - stated there was no evidence that children would be within the store at 06:00 hours or late at night with the purpose of purchasing alcohol. He stated that supermarkets regarded the sale of alcohol to under age persons very seriously, and trained staff accordingly. Of the 160 staff, 95% were from Otley. All staff were trained on the Check 21 policy which required purchasers to have the appropriate ID or sales would be refused.

Signage - was displayed throughout advising shoppers of the Check 21 policy, staff wore badges and the tills were ready to prompt cashiers when an alcohol sale was made. The store however could not guarantee that there would be no mistakes and he added that Mr Grey as a licensee would appreciate the battle against young people of 16/17 years who wished to purchase alcohol.

Deliveries, traffic and noise - these were planning issues and not within the remit of this hearing.

Late night drinkers – he suggested these comments were not relevant as the store would not be open at the end of pub operating hours.

Pricing – the pricing of alcohol was a matter for competition law not for this hearing. It was being addressed at central government level, which Sainsbury's was involved with. Any promotions within the store would be national promotions.

Early starts - Mr Botkai stated stores sought early morning hours to allow shoppers to buy alcohol at the same time as their general shopping, rather than make 2 trips. Furthermore early morning alcohol sales showed no correlation with increased anti social behaviour at that time of day.

Proxy sales – He stated the only way to prevent all proxy sales from this store was to refuse the application and he didn't believe any of the residents really wanted that.

TENS – The current TENS provision would not be appropriate for this store as it would only allow 4 days at a time for events. This would not be sufficient for the Christmas period as there had to be a gap of 24 hours between the end of one event and the start of another.

Pubwatch – The applicant had not refused to join the Pubwatch scheme, rather that Sainsbury's had not been approached and had no information on the scheme. The applicant would not agree to a condition requiring Pubwatch membership as there was no indication of requirements or costs. With these details the applicant may well sign up. If this store was

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found to cause problems in the future, membership of the Pubwatch scheme could be a condition to be added at Review.

Anti Social Behaviour – commented this occurred at the moment and queried how these people were getting drunk in Otley at the moment.

Health – this was not a licensing objective in England as the Act had not set public health as an objective.

Turning again to the conditions proposed by WYP, he reminded the Members that WYP had retained the phrase “All refusals” whereas he understood the parties had agreed “All cashiers shall be instructed through training to record”. He again reiterated his view that Sainsbury’s could only train staff to log the refusal. If the line suggested by WYP was retained then it would read that Sainsbury’s was legally liable, rather than the person who made the sale.

With regards to the store itself, Mr Botkai stated that Mr J Barker would be the store manager, and would be delighted to speak to the residents in due course. Mr Barker would also be the Designated Premises Supervisor for the store. If this application was successful the necessary application to transfer the DPS to Mr Barker would be made.

In answer to queries from the Sub Committee the following information was supplied:

- CCTV camera positions would be agreed with WYP. The digital system included 47 cameras in total which covered the car park area as well as the store and the applicant would prefer to agree the positioning with WYP rather than have the Sub Committee impose a condition at this point requiring the whole car park area be covered. Security guards were also provided in store, working in shift patterns
- Hours – confirmed the usual store opening hours and that the hours requested were the standard across all 850 Sainsbury’s stores, the majority of which had 23:00 or midnight closing. He reminded the Sub Committee that if they felt there was evidence the hours at Sainsbury’s would have an impact on crime and disorder, then the Sub Committee could restrict the hours
- Age related products – these products were mentioned in the application applied to goods not covered by the Licensing Act (such as knives, games and tobacco)
- Delivery times – acknowledged these were a concern for residents although not a licensing matter. Mr Botkai explained an informal arrangement drawn up by Mr Baker that deliveries would not be made between 23:00 and 06:00 hours
- Public nuisance – in respect of people throwing cans, Mr Botkai stated the store would be an off-licence and the vast majority of shoppers would take their alcohol purchases home. The car park would not be an attractive place to drink and the CCTV system would discourage this, plus the car park would be patrolled and cleaned regularly

Decision

The Sub Committee considered the application of Sainsbury's Supermarkets Ltd for a Premises Licence for their store at Bondgate, Otley as well as the verbal submission from Mr Botkai on behalf of the applicant. Members also considered the representations received against the application and the oral representations of Councillor Downes, Jane Close, Tim Deignan, Sue Cullen and Tony Grey.

The Sub Committee noted the amendments made to the application

- withdrawal of late night refreshment from the application
- reduction of the hours for the sale of alcohol to 07.00 until 22:00 hours
- Christmas - for the two weeks before Christmas Day and one week after Christmas Day applied for are 6.00 am until 10.00 pm.

Members considered whether granting this amended application would undermine the licensing objectives, which are:

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1. The prevention of crime and disorder,
2. Public safety,
3. The prevention of public nuisance,
4. The protection of children from harm,

Members considered there was no evidence to suggest the grant of this licence would undermine those objectives. The Sub Committee therefore resolved to grant the licence in the amended terms now requested. To clarify

Hours for the sale of alcohol

Sunday to Saturday 07:00 hours until 22:00 hours

Except for the 2 weeks prior to and one following Christmas when the applicant sought 06:00 hours until 22:00 hours)

This is subject to the agreement reached with the West Yorkshire Police being included in the operating schedule as follows:

- 1) A "Challenge 21" or (equivalent scheme) shall be adopted so that all cashiers are trained to ask any customer attempting to purchase alcohol, who appears to be under 21 years, for evidence of age. This evidence shall be photographic, such as passport or photographic driving licence, until other effective identification technology (for example, thumb print or pupil recognition) is adopted by the licence holder. All cashiers will be instructed through training that a sale shall not be made unless this evidence is produced.
- 2) All refusals of sales of alcohol will be recorded in a refusals register. All cashiers shall be instructed through training to record all refusals of sales of alcohol in a refusals register. The register will contain the following details: the time, day and date the refusal was made, the name of the staff member refusing the sale, the description of the young person attempting to purchase and details of the alcohol the young person attempted to purchase. The refusals register will be produced upon request to the Police or a relevant officer of a relevant Authority.
- 3) Records will be maintained at the store containing information about the training of any person who may make a sale of alcohol, including the date of the training and the nature of training undertaken. The relevant records will be produced on request to a Police Officer or a relevant officer of a responsible Authority.

Please note: the Sub Committee chose to retain the wording as suggested by WYP

There is a right of appeal to the Magistrates Court should you be dissatisfied with the decision made by the Sub Committee. You must make this appeal within 21 days of this letter reaching you.

Appeals should be addressed to the Magistrates Court at:

Clerk to the Justices

Leeds Magistrates Court

Westgate

Leeds

LS1 3JP and accompanied by a copy of this decision letter and the court fee of £400.00 if you are the premises licence holder and £200.00 for all other parties. Cheques should be made payable to HMCS.

Yours faithfully

Helen Gray
Clerk to the Licensing Sub Committee