

Waverley Borough Council

LICENSING SUB-COMMITTEE C

8TH FEBRUARY 2021

Title:

**LICENSING ACT 2003 - APPLICATION FOR A NEW PREMISES LICENCE-
MARKS & SPENCER, 13 OLD MARKET PLACE, FARNHAM, SURREY GU9 7SF.
[Wards Affected: All Farnham Wards]**

Portfolio Holder: Cllr Palmer, Portfolio Holder for Operational & Enforcement

Head of Service: Richard Homewood Head of Environmental and Regulatory Services

Key decision: No

Access: Public

1. Purpose and summary

- 1.1 The purpose of the report is to enable the Sub-Committee to consider an application for a new Premises Licence for Marks & Spencer Simply Foods Limited, at 13 Old Market Place, Farnham, Surrey GU9 7SF under section 17 of the Licensing Act 2003. One relevant representation has been received from 'other persons'.

2. Background

- 2.1. An application has been received for a new premises licence from Marks and Spencer Simply Foods Ltd, in respect of a retail store over one ground floor (with basement which is not the subject to the application) being constructed as part of a new Brightwells development in Farnham.
- 2.2 The application proposes that the licence will allow the premises to sell alcohol for consumption off the premises only
- 2.4 In accordance with the legislation, the applicant has sent copies of the application to responsible authorities and was advertised in accordance with the requirements of the Licensing Act 2003. The expiry date for making representations was 20 January 2021.

3. Activities sought under this licence application

3.1 In brief, the applicant seeks to licence the premises for the sale or supply of alcohol as shown below (off sales only). An extract of the relevant pages from the new application form is attached at Annexe 1.

- **Sale of Alcohol (Consumption Off the Premises Only)**

Monday to Sunday 0600 to 0000

- **Opening hours**

Monday to Sunday 0600 to 0000

3.2 Attached at Annexe 2 is a copy of the plans of the premises.

3.3 Attached at Annexe 3 is a plan showing the area of the premises and surrounding properties

4. Representations received

4.1. Within the consultation period, one valid 'relevant representation' was received

5. Responsible Authorities

5.1 There have been no representation(s) received from Responsible Authorities.

Note: Waverley's Planning Service (notified as Responsible Authority) commented on the application which was passed to the applicant who responded. A copy of the email trail and observation is attached at Annexe 4.

6. Other Persons

6.1 There has been one (1) relevant representation from "other persons" – Farnham Town Council. A copy of the representations is attached at Annexe 5.

7. Recommendation

- It is recommended that the Sub-Committee considers the application and evidence of all parties involved at the hearing and then determine the application.

- Members must determine the application in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.
- The Sub-Committee should take such steps (as described at paragraph 8.11 below) as it considers appropriate for the promotion of the licensing objectives.

Once determined, the licensing authority must provide notification of the decision including its reasons to the applicant, any person who has made relevant representations and the Chief Officer of Police for the area in which the premises is situated.

8. Reason for the recommendation

- 8.1 The general principle is that an application for a new Premises Licence must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.
- 8.2 Relevant representations are those which:
- Are about the effect of the granting of the application on the promotion of the licensing objectives
 - Are made by a Responsible Authority or other persons
 - Have not been withdrawn
 - Are not, in the opinion of the relevant Licensing Authority, frivolous or vexatious.
- 8.3 Licensing authorities are required to carry out licensing functions under the Licensing Act 2003 with a view to promoting the four licensing objectives of:-
- Prevention of crime and disorder;
 - Public safety;
 - Prevention of nuisance; and
 - Protection of children from harm.
- 8.4 Members should note that each objective is of equal importance. There are no other licensing objectives, and the four objectives are paramount considerations at all times.
- 8.5 The Licensing Sub-Committee must also consider Waverley Borough Council's Statement of Licensing Policy when deciding whether or not to grant the application. The terms of the Statement of Licensing Policy are highly persuasive, but not binding, on the Licensing Sub-Committee. The Licensing Sub-Committee may depart from the guidance contained in the Statement of Licensing Policy if it considers there are clear and convincing reasons to do so.
- 8.6 Where there is a conflict between the Licensing Act 2003 and the Statement of

Licensing Policy, the Licensing Act 2003 must prevail.

8.7 Members are required to have regard to the Home Office Guidance issued under section 182 of the Licensing Act 2003 in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case

8.8 The guidance will be available for reference purposes at the meeting.* Particular attention is drawn to:

- Conditions – paragraphs 1.16-1.17 and 10.1 to 10.66
- The Licensing Objectives – paragraphs 2.1–2.32
- Hearings - paragraphs 9.31 to 9.44

The guidance can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf

8.9 When relevant representations are received then the Sub-Committee must have regard to them.

8.10 The Licensing Sub-Committee can attach a “weight” to any relevant representations, such factors that could influence the “weight” to be placed on a representation could include:

- Whether the representation can be clearly related to any one of the four licensing objectives;
- Whether the representation concerns matters over which the applicant is able to exercise control;
- Whether the representation is based on “hearsay” evidence;
- Whether the representation is supported by firm evidence;
- Whether the person making the representation has attended the hearing in person.

8.11 The Sub-Committee must consider the application on its individual merits and take into account all relevant matters, then determine the application by taking the steps it considers appropriate and necessary / proportionate to promote the licensing objectives. Having considered all relevant representations, and having taken into account the promotion of the licensing objectives, a decision can be taken:

- To grant the licence, subject to the mandatory conditions and conditions consistent with the operating schedule;
- To impose additional relevant conditions to such an extent as is considered necessary for the promotion of the licensing objectives;
- To exclude any of the licensable activities to which the application relates
- To amend the times for all or some of the licensable activities;
- To refuse to specify a person on the licence as the designated premises

supervisor

- To reject the application

9. Conditions

9.1 Conditions will not be necessary if they duplicate a current statutory requirement and there is no duty to impose conditions consistent with the operating schedule – rather it is a power..

Conditions must relate to the representation(s) and any conditions imposed must be proportionate, clear, achievable and enforceable. Evident is required before conditions, restrictions or refusals can be imposed following representations – speculation is not sufficient but this does not prevent conditions being attached to a new premises on the basis of the history of the premises or the applicant (Daniel Thwaites PLC v Wirral Borough Magistrates' Court [2008] EWHC 838 Admin).

9.2 Members are also referred to the Home Office guidance on conditions, specifically section 10 (para 10.10) which states that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises. Conditions should be determined on a case by case basis and standardised conditions, which ignore these individual aspects, should be avoided. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions.

9.3 Licensing authorities should therefore ensure that any conditions they impose, are only those which are appropriate for the promotion of the licensing objectives.

9.4 If the Sub-Committee determines that it is necessary to modify the conditions, or to refuse the application for a Premises Licence application, it must give reasons for its decision.

10. The Role of the Licensing Sub-Committee

10.1 Members should note that the Licensing Sub-Committee is meeting on this occasion solely to perform the role of licensing authority. The Sub-Committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, Members should disregard the Council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the Licensing Law, Guidance and the Council's Statement of Licensing Policy.

10.2 As a quasi-judicial body the Licensing Sub-Committee is required to consider the application on its merits. The Sub-Committee must take into account only relevant factors, and ignore irrelevant factors. The decision must be based on material evidence, which tends logically to show the existence or non-existence of relevant facts, the occurrence of which would be relevant.

10.3 The Licensing Sub-Committee must give fair consideration to the contentions of all

persons entitled to make representations to them.

10.4 The Licensing Sub-Committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working or engaged in normal activity in the area concerned.

10.5 The Sub-Committee can only consider matters within the application that have been raised through representations from Responsible Authorities (none in this case) and other persons. This will be decided on a case to case basis.

11. Relationship to the Corporate Strategy and Service Plan

11.1 Waverley promotes and sustains a thriving local economy.

12. Implications of decision

12.1 Resource (Finance, procurement, staffing, IT)

Members should be aware that Environmental and Regulatory Services does not have a direct budget provision for costs, should the applicant be successful in appealing to the Magistrates Court against a decision of the Council.

12.2 Risk management

Not applicable

12.3 Legal

An appeal against the determination of this application may be made to the Magistrates' Court within 21 days of all parties being notified of the local authority's decision. The applicant or any party making representation may make an appeal.

12.4 Equality, diversity and inclusion

Under the Human Rights Act 1998, the Sub-Committee needs to consider the balance between the rights of the licensee and those making representations when making their decision. The Sub-Committee has a duty under section 17 of the Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the Waverley area.

12.5 Climate emergency declaration

There are no matters which directly impact upon the climate emergency declaration.

13. Consultation and engagement

13.1 The application has been advertised at the premises and in a local paper in accordance with the requirements of the Licensing Act 2003

14. Other options considered

14.1 Not applicable

15. Governance journey

15.1 Not applicable

Annexes:

Annexe 1 – An extract of the relevant pages from the new application form

Annexe 2 – A copy of the plans of the premises

Annexe 3 – A plan showing the area of the premises and surrounding properties

Annexe 4 – Email trail between applicant and Planning Service

Annexe 5 - Copies of the representations received from 'Other Persons'

Background Papers

Background papers, as defined by Section 100D(5) of the Local Government Act 1972) are

The Licensing Act 2003

Guidance under 182 Licensing Act 2003

Waverley's Statement of Licensing Policy

.

CONTACT OFFICER:

Name: Paul Hughes

Position: Licensing & Environmental Enforcement Manager

Telephone: 0148 3523189

Email: paul.hughes@waverley.gov.uk

Agreed and signed off by

Legal Services: date

Head of Finance: date

Strategic Director: date

Portfolio Holder: date