

MINUTES OF THE LICENSING (HEARING) SUB COMMITTEE

HELD ON 4 JULY 2013

APPLICANT: SELECT SERVICE PARTNER LTD
PREMISES: WHISTLESTOP, FENCHURCH STREET RAILWAY STATION, EC3M 4AJ

PRESENT

Sub Committee:

Rev Dr Martin Dudley CC (Chairman)
Deputy John Barker OBE CC
Jamie Ingham Clark CC

City of London Officers:

Alistair MacLellan – Town Clerk’s Department
Rakesh Hira – Town Clerk’s Department
Paul Chadha – Comptroller & City Solicitor’s Department
Peter Davenport – Markets & Consumer Protection Department

Applicant:

Represented by Nicola Smith and supported by Bob di Giuseppe (Head of Operations Excellence, Select Service Partner Ltd) and Ahsan ul Haq (Multi Unit Manager, Select Service Ltd).

Representations of objection:

Robert Benton

Licensing Act 2003 (Hearings) Regulations 2005

- 1) A public Hearing was held at 10.00am in the Committee Rooms, Guildhall, London, EC2, to consider the representations submitted in respect of an application for the premises ‘Whistlestop, Fenchurch Street Railway Station, EC3M 4AJ’.

The Sub Committee had before them a report of the Director of Markets and Consumer Protection, which appended copies of:-

- Appendix 1: Copy of Application
- Appendix 2: Current Premises Licence
- Appendix 3: Current Conditions
- Appendix 4: Representations from Other Persons (1)

Appendix 5: Map of subject premises together with other licensed premises in the area and their latest terminal time for alcohol sales

Appendix 6: Current Plan of Premises

In addition the following documents, which were circulated to all parties prior to the Hearing, were also considered:

- Letter dated 20 June 2013 from Alistair MacLellan providing an amended list of premises to that found on page 28 of the original Committee Agenda Pack.
 - Letter dated 28 June 2013 providing witness statements by Mick Buckley (National Operations Manager, Select Service Partner Ltd) and Ahsan ul Haq (Multi Unit Manager, Select Service Partner Ltd).
- 2) The Hearing commenced at 10:00am.
 - 3) The Chairman opened the Hearing by introducing himself, the other Members of the Sub Committee, the officers present and the nature of the application.
 - 4) It was noted that no Members of the Sub Committee had any declarations.
 - 5) The application sought to extend the current terminal hour for the sale of alcohol to 01:00 and add Late Night Refreshment until 01:00. Recorded music remains unchanged and is unrestricted.

<u>Activity</u>	<u>Current Licence</u>	<u>Proposed Licence</u>
Sale of Alcohol	Mon-Sat 08:00 – 23:00 Sun 10:00 – 22:30	Mon – Sun 08:00 – 01:00
Recorded Music	No Restrictions	No Restrictions
Late Night Refreshment	Not Currently Licensed	Mon – Sun 23:00 – 01:00

- 6) The Chairman invited Mr Benton to provide a summary of his objections to the application. Mr Benton began by referring to the two witness statements from Mr Buckley and Mr al Haq, noting that Mr al Haq had stated there was no requirement for the premises to monitor the consumption of alcohol off the premises. Mr Benton felt that this was not an acceptable position for the applicant to take, and that there was an inherent responsibility on the applicant given that crime tended to be associated with the Night Time Economy. Given the nature of the application Mr Benton failed to see why people travelling home late at night would need to buy alcohol, and similarly why people travelling into

Fenchurch Street to socialise in the City would need to be able to purchase alcohol in the station. Mr Benton was of the opinion that alcohol consumption after 23:00hrs should be in supervised premises. He argued that given the last train from Fenchurch Street left at 00:20hrs there existed no reason for the premises in question to extend its license until 01:00hrs. He concluded by saying there existed a responsibility for everyone – the City included – to encourage responsible drinking and that the City should keep in mind the fact alcohol consumption on trains caused problems hundreds of miles away from the point of sale.

- 7) The Chairman then asked Mrs Smith if she wished to pose any questions to Mr Benton. In response to questions from Mrs Smith, Mr Benton confirmed that he was the Manager of the East India Arms in Fenchurch Street, but that he was addressing the Sub Committee as a local Resident. In response to further questions he confirmed that the licensed hours of the East India Arms were 10:00hrs – 01:00hrs Thurs – Sat, that these hours were historic but that his premises tended to close at 23:00hrs at the latest. Nevertheless he confirmed that he had chosen to retain the license until 01:00hrs.
- 8) In response to a question from the Chairman, Mr Benton stated that in general his premises closed between 21:30hrs and 22:00hrs during the week.
- 9) The Chairman then invited Mrs Smith to address the Sub Committee. Mrs Smith proceeded to outline the four strands of the licensing application before noting that of these, the only contested item was the hours for the sale of alcohol.
- 10) In response to a request from the Chairman, Mrs Smith explained the proposed plan of the premises set out on page 29. Mrs Smith explained that there was a direct entry to the premises from the station concourse, and that the tills were situated at the far end of the premises with a clear line of sight through the premises onto the concourse. She noted that dark shaded areas on the plan denoted areas set aside for the display of alcohol, and that there were no self-service facilities. She added that there would be some limited display of alcohol in other areas of the premises. She noted that the premises also sold snacks, food, and confectionary. It traded, essentially, as a small convenience store.
- 11) In response to a question from the Chairman, Mr ul Haq confirmed that the chiller cabinets in the premises were used for soft drinks and sandwiches as well as for alcohol.
- 12) Mrs Smith proceeded to give a statement in support of the application. She noted that the premises had traded without significant problems or issues for over a decade. She added that whilst the opening hours of the premises were not restricted, the sale of alcohol was. She explained that whilst trains from Fenchurch Street did in general finish by 01:00hrs

there was a degree of flexibility in the timing depending on the day of the week and ad hoc cancellations. For example whilst on Fridays the last train was 00:25hrs, on Saturdays it was 00:40hrs and for this reason the applicant wanted the flexibility offered by a variation in its license. Mrs Smith continued by noting that the premises was not open when the station closed, and that the current application had received no objections from the likes of the British Transport Police, the Health and Safety Executive or Network Rail.

- 13) In support of her statement Mrs Smith referred to the photographs in the witness statement provided by Mr Buckley. Mrs Smith stated that there was no signage for the premises either in the external windows of the station or in the station entrance itself, and that given it was on the upper concourse access to the premises was limited to those who accessed the station itself. She further noted that the applicant, Select Service Partner Ltd, was a national business operating 260 outlets including the Marks and Spencer Simply Food franchise. At present the applicant was operating 17 licensed Whistlestops, and in each of these it operated the 'Challenge 25' scheme aimed at under-age drinkers. Store Managers were responsible for monitoring refusal of sales, and premises staff are only entitled to serve customers once they have if they had been trained for the 'Challenge 25' scheme. This training was refreshed with a worksheet every four weeks and in detail every six months. Mrs Smith added that the applicant's internal audit team – which monitored alcohol sales performance - reported directly to the Board and that premises that failed to meet internal audit standards had to report to the Board's senior committee. Mrs Smith noted that each premises had a licensing log and that she was able to provide a copy to the Committee for them to inspect. Furthermore, the premises in question had never failed an internal audit and there was no record of complaint against the premises from either National Rail or the station operator.
- 14) Mrs Smith went on to comment on the objections raised by Mr Benton. She argued that some of his objections were of a commercial nature and therefore not relevant. Regarding his concerns over irresponsible drinking, she stated that staff of Select Service Partner Ltd were trained not to sell alcohol to drunk persons, and that there was no history of enforcement issues at the premises. She argued that given the location of the premises it was unlikely irresponsible or underage drinking would be a problem given the clear visuals in the premises and the location being monitored by National Rail CCTV. She added that premises staff were trained on how to deal with proxy sales for underage drinkers, and that given the premises was an off-license there was no requirement for staff to monitor alcohol consumption off the premises. She observed that nevertheless the station itself was monitored by National Rail, the station operator, and the Police. In concluding Mrs Smith noted that it was in the applicant's interest to ensure there were no problems with alcohol sales; the premises would only be open at the same time as the station itself; and there was a precedent for alcohol sales in the station already

given the Upper Crust (another Select Service Partner outlet) was licensed until 01:00hrs.

- 15) In response to an invitation from the Chairman, Mr Benton stated that he had no questions to put to the applicant.
- 16) In response to question from a member of the Sub Committee, Mrs Smith stated that premises staff did carry out some limited monitoring in the immediate vicinity of the premises.
- 17) In response to a question from a member of the Sub Committee member, Mrs Smith stated that the station's closing time was dependent on the last train. The times of the last trains varied depending on the working week (00:25hrs) and the weekend (00:40hrs) and that delays sometimes meant the last train left the station later than planned.
- 18) In response to question from a member of the Sub Committee on the average customer footfall after 23:00hrs, Mr ul Haq replied that the premises was generally busy at present, with some requests for the sale of alcohol. He said that footfall in general was around 800-900 persons.
- 19) In response to a question from the Chairman on who was the premises supervisor, Mr ul Haq stated that the dedicated premises supervisor was Mr Milan Patel, who was present in the premises each day of the week and on two weekends a month.
- 20) In response to a comment from Mr Benton querying the need to sell spirits after 23:00hrs, Mr di Giuseppe replied that Select Service Partner Ltd was a national company that took its obligations over the sale of alcohol seriously, and that issues over alcohol sales were monitored by an internal audit team that had direct access to the company's Board.
- 21) In response to a question from Mr Boden on noise vibration, Ms Hawker said that they felt it best if they reacted to noise nuisance issues as they arose and that at that point a noise or vibration assessment could take place. Mr ul Haq added that furthermore the premises in question had not been subject to any complaints since 2003, but that nevertheless any complaints that arose would be taken very seriously.
- 22) Mrs Smith drew attention to page 6 of the Committee Report and paragraph 6.3 in particular, noting that the Sub Committee was obliged to make an evidence-based decision. She argued that, Mr Benton notwithstanding, there was an absence of substantive objections. She concluded by saying that the applicant had demonstrated a good trading at the premises in question and that the applicant currently operated the longer hours in question at its unit in Liverpool Street without any issues.
- 23) The Chairman noted the applicant's request for the removal of existing conditions 1 and 2, and asked the applicant if they had any objection to

conditions 3 and 4 being removed also, given they were not strictly speaking conditions.

- 24) Upon retiring to consider its decision, the Sub Committee returned and announced its decision to grant the application given the Sub Committee found no evidence that the licensing objectives would not be promoted if it granted the requested variation.
- 25) The Chairman thanked everyone for attending and confirmed that a decision letter would be circulated in due course.

The meeting closed at 11.55am

Chairman

Contact Officer: Alistair MacLellan
Tel. no. 020 7332 1416
E-mail: alistair.maclellan@cityoflondon.gov.uk

Copy of Decision Letter text sent to all Parties on 12 July 2013

1. This decision relates to an application made by Select Service Partner Ltd for a variation to a premises licence in respect of the premises 'Whistlestop, Fenchurch Street Railway Station, EC3M 4AJ'.

The application sought to extend the current terminal hour for the sale of alcohol to 01:00am. Recorded music remains unchanged and is unrestricted.

<u>Activity</u>	<u>Current Licence</u>	<u>Proposed Licence</u>
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2. The Sub Committee considered the application and carefully considered the representations submitted in writing and orally at the hearing by the applicant, and a local resident.
3. In reaching the decision the Sub Committee were mindful of the provisions of the Licensing Act 2003, in particular the statutory licensing objectives, together with the guidance issued by the Secretary of State in pursuance of the Act and the City of London's own Statement of Licensing Policy dated January 2011.
4. Furthermore, the Sub Committee took on board the duty to apply the statutory test as to whether an application should or should not be granted, that test being that the application should be granted unless it was satisfied that it was necessary to refuse all, or part, of an application or necessary to impose conditions on the granting of the application in order to promote one (or more) of the licensing objectives.
5. In determining the application the Sub Committee first and foremost put the promotion of the licensing objectives at the heart of their decision. In this instance, the most relevant of those objectives is primarily that of public safety.
6. The Sub Committee found no evidence that the licensing objectives would not be promoted if it granted the requested variation. The Sub Committee have therefore decided to grant the variation.
7. The Sub Committee decided that no conditions were necessary.
8. The Sub Committee considered the existing conditions, set out in Appendix 3 on page 23 (Conditions consistent with the Operating Schedule) and was of the opinion that these be revoked.
9. If the Sub Committee was wrong and the conditions prove insufficient to prevent a public nuisance associated with these premises, all parties

are reminded that any responsible authority, business, resident or a Member of the Court of Common Council is entitled to apply for a review of the licence which may result, amongst other things, in a variation of the conditions, the removal of a licensable activity or the complete revocation of the licence.

10. If any party is dissatisfied with the decision, he or she is reminded of the right to appeal, within 21 days, to a Magistrates' Court. Any party proposing to appeal is also reminded that under s181(2) of the Licensing Act 2003, the Magistrates' Court hearing the appeal may make such order as to costs as it thinks fit.

Yours sincerely

Alistair MacLellan

Clerk to the Licensing (Hearing) Sub Committee