

**MINUTES OF THE LICENSING SUB-COMMITTEE C
TUESDAY, 26 APRIL 2011 AND RECONVENED ON THURSDAY, 19 MAY 2011**

Councillors Basu, Ejiofor (Chair) and Jenks

MINUTE NO.	SUBJECT/DECISION	ACTON BY
LSCC15.	<p>APOLOGIES FOR ABSENCE</p> <p>Apologies for absence were received from Cllr Scott, for whom Cllr Jenks was substituting.</p>	
LSCC16.	<p>URGENT BUSINESS</p> <p>There were no items of urgent business.</p>	
LSCC17.	<p>DECLARATIONS OF INTEREST</p> <p>There were no declarations of interest.</p>	
LSCC18.	<p>SUMMARY OF PROCEDURE</p> <p>NOTED</p>	
LSCC19.	<p>WELLINGTON SERVICE STATION, 513 ARCHWAY ROAD, HIGHGATE, LONDON N6 4HX</p> <p>In considering the admission of late documentation in respect of the application, the Chair agreed to a request by the applicant's representative Mr Brian Kent, to make a submission on this point. The documentation in question consisted of sales figures and analysis, and it was the submission of Mr Kent that this information was not relevant to the application before the Committee and should not be taken into consideration as part of the hearing.</p> <p>The Licensing officer, Keith Betts, introduced the report on an application by Roc UK Ltd for a premises licence at Wellington Service Station, 513 Archway Road, Highgate for the Provision of Late Night Refreshment and the Supply of Alcohol. Representation had been made by the Metropolitan Police but had subsequently been withdrawn when the hours for the supply of alcohol were reduced 0600 to 2200. A letter of objection to the application had been received from a local resident, as well as a petition signed by about 29 local residents. The objections related to issues of concern including refuse, anti-social behaviour, policing, the need for a premises supplying alcohol in the area and the impact on the local community. Mr Betts advised the Committee that the last sentence of paragraph 9 of the report contained an error, and should read "It is for the Sub Committee to decide if the supporting chart truly illustrates the ratio of fuel sales to non-fuel sales".</p> <p>The applicant's representative, Mr Kent, addressed the Committee on the point that the only relevant issues the Committee should be considering were those raised as part of the consultation process and</p>	

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that, were the Committee to consider the issues raised in the 'Licensing Officers Comments' section of the report, it would be acting beyond its remit as these issues had been raised by the Licensing Authority and not the representations received from responsible authorities or local residents. Mr Kent cited the judgements in respect of BBPA and Others v Canterbury City Council (2006) and Murco Petroleum Ltd v Bristol City Council (2010) in support of his submission that only issues covered by representations made in respect of an application could be considered by the Licensing Committee. The hearing was adjourned for the Committee to seek legal advice.

On reconvening, the Committee's legal advisor, Antonios Michael, reported that he had advised the Committee that they must consider section 182 of the guidance, which stated that "the licensing authority must decide whether or not any premises is used primarily as a garage". Mr Michael also advised that, on his reading of the Murco Petroleum v Bristol City Council judgement, the Committee was entitled to consider the information, as residents had made representations under the Licensing Objectives.

Having considered the legal advice, the Committee confirmed that they would consider the information. The information was shared with the objectors, who confirmed that they had not objection to its admission.

The Committee next considered the issue of whether the premises was primarily used as a garage as, if it was determined that this was the case, the application would be rendered invalid. The applicant's representative, Mr Kent, addressed the Committee on this point and advised that, since the section 176 of the Licensing Act 1988 was written, circumstances in the trade had changed and the only way for garages to survive in competition with supermarkets was by operating as convenience stores; this was the service customers now expected. On the basis of the information supplied, Mr Kent stated that the primary use of the premises by turnover was groceries, not fuel sales. Mr Michael addressed the Committee and stated that under the section 182 guidance, paragraph 5.24, an assessment of whether a premises was primarily a garage was based on 'intensity of use', which was a general term and had to be determined on a case by case basis. In response to a question from the Committee, it was confirmed that there was no definitive measure of intensity of use, and that it was open to the Committee to decide how they wished to interpret this.

The Committee considered the figures provided in respect of fuel and non-fuel sales, and asked questions regarding the way in which this information was compiled. It was confirmed that there was a system in place which recorded data on the number of customers and the items purchased, although there was no record of where customers came from or the means by which they had travelled.

The Committee adjourned to consider the issue of whether the premises was primarily operated as a garage.

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	<p>The Committee decided that it was not at this stage, based on the information supplied by the applicant, satisfied on the balance of probabilities that the premises was not primarily used as a garage, which would deem the premises subject of the application as an excluded premises. The Committee, however, considered that it would be fair to allow the applicant a further opportunity to supply more detailed information to help the Committee determine this issue, since it was the lack of sufficient information upon which this decision had been reached. This would also allow an opportunity for all appropriate parties to have more time to consider the evidence, which the Committee would of course consider with an open mind. The hearing was therefore adjourned to a specific date, such date to be set no later than Thursday 28th April 2011. For the avoidance of doubt, as many dates to be avoided by all parties would be obtained immediately at the conclusion of the hearing this evening.</p> <p>The meeting was adjourned at 21:00hrs.</p>	
LSCC20.	<p>ITEMS OF URGENT BUSINESS</p> <p>There were no new items of urgent business.</p>	
LSCC21.	<p>MINUTES</p> <p>RESOLVED</p> <p>That the minutes of the meeting of Licensing Sub Committee C held on 22 March 2011 be approved and signed by the Chair.</p> <p>The meeting was adjourned at 9pm on Tuesday 26th April.</p>	
LSCC22.	<p>WELLINGTON SERVICE STATION, 513 ARCHWAY ROAD, HIGHGATE, LONDON N6 4HX</p> <p>The Committee reconvened on Thursday 19th May 2011 at 7pm.</p> <p>After introductions around the table, the Chair clarified for the record that both he and Cllr Jenks had bought petrol from the premises in the past. The Chair explained that, further to a request from the Committee for greater clarity on the primary use of the premises, the issue of primary use needed to be addressed first and foremost as, if the Committee were not convinced that the primary purpose was not that of a garage, then the Committee would not be able to grant a premises licence. Following a presentation from the applicant on primary, the Committee would adjourn to deliberate on this particular issue.</p> <p>The applicant's representative, Mr Grant, addressed the Committee on the issue of primary use. Mr Grant presented the current position in</p>	

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respect of petrol stations and the competition faced from supermarkets, and the low level of profit derived from fuel sales in the current economic climate. Mr Grant spoke about the way in which the exemption of garages from sale of alcohol had come about and that this was based on perception, despite evidence demonstrating there was no link in sale of alcohol at garages and drink-driving levels.

The Committee was advised that there was no standard definition of primary use and Mr Grant outlined the different ways in which this could be measured. Turnover was not seen as the preferred test for assessing primary use on the basis that a single significant transaction could distort the picture, and Mr Grant argued that footfall was a fairer test, as the Licensing Objectives would be engaged by the people visiting the premises.

Mr Grant took the Committee through the additional data provided by the applicant in relation to footfall, and proposed that this clearly demonstrated that the majority of transactions at the premises were non-fuel related. The Committee was also asked to consider the financial data comparing profit on fuel and non-fuel sales, and it was proposed that this also demonstrated that the primary use of the site was non-fuel. The Committee was advised that were a licence granted and the position changed such that the primary use of the premises did become that of a garage, it would no longer be legal for the premises to supply alcohol.

In response to a question from the Committee regarding whether there was any record of the way in which customers physically arrived at the site, it was reported that there were no records of this kind available. It was also confirmed that the figures provided did not include any data relating to the car wash. The Committee asked about the figures provided and what was included in these figures, in response to which the applicant confirmed that operating costs were deducted for all transactions at point of sale.

The Committee asked about the different means of assessing intensity of use, in response to which Mr Grant emphasised that, for the reasons outlined previously, he felt that footfall was a fairer test than turnover.

The Committee adjourned to consider the issue of primary use.

RESOLVED

The Committee carefully considered the issue of primary use. For the record, the Committee's entitlement to consider the issue was objected to by the applicant at the initial part of this hearing on 26 April 2011 but was expressly not objected to at the resumption of the hearing today.

The Council's Statement of Licensing Policy, Section 182 Guidance and the existence of written representations were considered as well as the case of R (on the application of) Murco Petroleum Ltd v Bristol City Council (2010) along with the cases referred to therein.

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The test the Committee applied was that of intensity of use as reflected in paragraph 5.24 of the Section 182 Guidance, October 2010 publication. In determining this, the Committee took into account both the number of customers and evidence of turnover, as it considered it entitled to do following the judgement of Murco. In terms of customer numbers, the Committee considered all the numerical data submitted by the applicant. The Committee noted that, were the number of fuel-only and mixed transactions combined, it did not necessarily indicate that the primary use in terms of transactions was not that of a garage. The difference was not considered sufficient for a determination to be made. The Committee did not consider primary use to be defined simply as over 50%. The Committee noted that the fuel element of the mixed transactions was not broken down and although told it could not be broken down, was not of the view that that should necessarily go in the applicant's favour. The Committee took the view that it was most likely that the fuel element would weigh heavily in those mixed transactions.

The Committee took into account the footfall data along with, and not in isolation from, turnover, which was the second test it applied. Turnover was considered to mean sales less duty and VAT in accordance with the case of *Green v Justices for the Inner London Area (1994)*. This definition did not appear to be disputed during the hearing. The Committee did not consider it was required to remove operating costs to determine the turnover. The Committee noted that turnover for fuel sales for January to December 2010 was £2,704,448.95 and the equivalent figure for non-fuel sales was £788,956.50. It therefore considered that, based on the turnover test, the primary use of the premises was that of a garage.

In summary, the evidence presented did not persuade the Committee that the primary use of the premises was not that of a garage, consequently the Committee's decision is that the applicant is not entitled to a premises licence at this time for the Wellington Service Station for the sale of alcohol.

The day after the Committee meeting, it became apparent that the late night refreshment aspect of the application had not been considered. This omission did not appear to be observed by any of the parties including the Applicant at the time. The borough's Local Licensing Procedure Rules permits the Chair of a committee meeting to be advised on steps to remedy procedural errors such as the aforementioned omission after a decision has been made. The Chair consulted with the other members of the committee meeting and it was decided that the application for late night refreshment as applied for would be granted without the attachment of any discretionary conditions. Reconvening the hearing was not considered necessary since the view of the committee was that the written representations related to the sale of alcohol.

The decision of the committee is therefore that a premises licence is permitted for the provision of late night refreshment but not for the sale of alcohol for the reasons outlined above.

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	The meeting closed at 21:45hrs.	
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Cllr Joseph Ejiofor

Chair