

# FAREHAM

## BOROUGH COUNCIL

### Report to Licensing Panel

**Date:** 02 December 2016

**Report of:** Licensing Officer

**Subject:** LICENSING ACT 2003 – APPLICATION FOR NEW PREMISES  
LICENCE: OASIS CONVENIENCE STORE, 152A WEST STREET,  
FAREHAM PO16 0EH

#### SUMMARY

This report advises Members of the Panel of the relevant representation received from a member of the Public regarding a Premises Application in respect of Oasis Convenience Store, 152A West Street, Fareham, PO16 0EH.

#### RECOMMENDATION

That the Panel decides whether the representations are relevant to the new application, and if it is decided that the representations are relevant, the Panel determines the application having regard to the provisions of the Licencing Act 2003 and associated regulations, the Council's Licensing Policy and the representation received.

## **BACKGROUND**

1. The Licensing Act 2003 specifically restricts the grounds on which the Council, as Licensing Authority (LA), may refuse an application for a New Premises Licence, or impose conditions. Where relevant representations are made, the LA may refuse on the grounds that the licensing objectives are not met or the operating schedule is inadequate. Equally, conditions may be imposed where appropriate. The LA may also refuse an application in part and thereby only permit some of the licensable activities sought.
2. The decision making committee, in considering an application, must have regard to the adopted Statement of Licensing Policy and any relevant representations made.
3. An applicant applying for a new premises licence, whose application has been refused, or who is aggrieved by conditions imposed, may appeal against the decision to the Magistrates' Court.
4. In considering this application the Panel will sit in a quasi-judicial capacity and is thus obliged to consider applications in accordance with both the Licensing Act 2003 (Hearings) Regulations 2005, and amending secondary legislation and the rules of natural justice. The practical effect of this is that the Panel must make its decision based on evidence submitted in accordance with the legislation and give adequate reasons for reaching its decision. The Panel must also have regard to:-

### **Crime and Disorder Act 1998**

Section 17 of the Crime and Disorder Act 1998 places a Council under a duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

### **Human Rights Act 1998**

The Act requires UK legislation in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon other persons' Human Rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations.

## **PROCEDURE FOR THE HEARING OF THE APPLICATION**

5. The standard procedure for the hearing of this licensing application can be seen as Appendix A.

## THE APPLICATION

6. This application is in respect of:-

Oasis Convenience Store, 152A West Street, Fareham, PO16 0EH

The application is for a new Premises Licence.

The applicant is: Mr Mehulkumar Shukal, Flat, Netherend Stores, Netherend, Woolaston, Lydney, GL15 6NN. The application was submitted on 13<sup>th</sup> October 2016.

The licence is for the sale of alcohol Monday to Sunday between 08:00 and 23:00. These are also the opening hours.

A copy of the application can be seen as Appendix B. The Premises Plan can be seen as Appendix C.

7. These premises previously held a licence under the same business name, from 03-02-2006 until 06-09-2016 when it was revoked.
8. This is a new premises licence application submitted by a new applicant.

## RELEVANT REPRESENTATIONS

9. Responsible Authorities

In respect of this new premises application we received representations from responsible authorities as follows:

|                           |                                |
|---------------------------|--------------------------------|
| Child Protection Services | No representation              |
| Hampshire Fire and Rescue | No representation              |
| FBC Health and Safety     | No representation              |
| FBC Pollution             | No representation              |
| FBC Planning              | No representation              |
| Police                    | No representation              |
| Trading Standards         | <b>Representation received</b> |
| Hampshire Public Health   | No representation              |

The Trading Standards representation can be seen as Appendix D to this report.

The applicant's response to the Trading Standards representation can be seen as Appendix D1.

10. The Police also requested the applicant apply conditions to the licence. These were very similar to the Trading Standards conditions so were combined and sent to both authorities for agreement. The Police confirmed they were happy with the conditions. No response was received by Trading Standards. These conditions can be seen as Appendix E.

## OTHER PERSONS REPRESENTATIONS

11. A representation was received from an 'other person'. This representation can be seen as Appendix F.
12. A map showing the premises and the location of "Other Persons" properties can be seen as Appendix G.

## CONCLUSION

13. Any decision made by the Panel must be in accordance with the four licensing objectives, the Council's licensing policy and the Section 182 guidance issued by the Secretary of State.
14. The Panel Members are asked to determine whether the representations made are relevant and if so the Panel Members are asked to review the information in this report and any additional evidence presented to them at the Hearing when determining the application.

### Background papers:

None.

**Enquiries:** For further information please contact Helen Spires, ext 4411.

Licensing, Fareham Borough Council, Civic Offices, Civic Way, Fareham, PO16 7AZ  
[www.fareham.gov.uk](http://www.fareham.gov.uk)

Hearings procedure as detailed at  
New Premises Application  
Premises Plan  
Representation from Trading Standards  
Email agreement of Conditions  
Conditions agreed by Trading Standards, Police, Applicant  
Representation from 'Other Person'  
Map showing premises and "Other Persons" proximity

APPENDIX A  
[APPENDIX B](#)  
[APPENDIX C](#)  
[APPENDIX D](#)  
[APPENDIX D1](#)  
[APPENDIX E](#)  
[APPENDIX F](#)  
[APPENDIX G](#)

# FAREHAM

## BOROUGH COUNCIL

### PROCEDURE FOR HEARINGS BY THE LICENSING PANEL

#### GENERAL

- 1 This procedure will be followed for hearings held by the Licensing Panel to determine :-
  - Applications for grant, variation or review of a premises licence under the provisions of the Licensing Act 2003 where representations have been made by any of the responsible authorities or other persons (as defined by the Licensing Act 2003);
  - Applications for grant or renewal of a personal licence under the provisions of the Licensing Act 2003 where representations have been made by any of the responsible authorities or other persons (as defined by the Licensing Act 2003);
  - Applications for grant or renewal of a public entertainments licence which is not otherwise determined by officers;
  - Such other licensing matter as may be referred by the Licensing Officer or the Licensing and Regulatory Affairs Committee from time to time.
- 2 Hearings shall be held in public unless the Panel considers that the greater public interest is served by excluding the public from the meeting in accordance with Schedule 12A of the Local Government Act 1972. Circumstances when it may be appropriate to do so include where there is a likelihood of disclosing exempt information relating to the applicant.
- 3 Parties to the hearing will be the applicant and any responsible authority or other person party making representations. The parties to the hearing may be accompanied by a representative, who may present the case on their behalf.
- 4 The Licensing Officer will not be a party to the hearing but will facilitate proceedings by conducting such pre-decision discussions as may be required and by presenting at the hearing a summary report of the application and any representations, together with the Officer's comments as to how these relate to the relevant legislation and the appropriate licensing policy.
- 5 Where any party intends to produce documents in support of his/her case they shall have been asked to do so in advance of the date of hearing. In the event that a document is submitted for consideration for the first time at the hearing, the Chairman may adjourn the hearing to a later time or date. It is expected that such adjournments will only be used in exceptional circumstances. The Chairman may in any event adjourn the hearing at any time before the Panel reaches its decision for any other reason he/she considers appropriate.
- 6 Each party when asked will present details of any witnesses to be called.

## **AT A HEARING in accordance with THE LICENSING ACT 2003**

- 1 **The Chairman of the Licensing Panel** will outline the procedure to be observed and may invite any Other Persons to appoint a spokesperson<sup>2</sup>.
- 2 **The Chairman** will ask the applicant whether any modification is to be made to the application or operating schedule submitted.
- 3 **The Licensing Officer** will present a summary of the application and of any representations received and will comment upon their relevance to the Licensing Act 2003 and the Council's licensing policy.
- 4 **The Applicant** may comment on the application and on representations made addressing the four licensing objectives<sup>3</sup>.
- 5 **The Panel** may seek clarification of points.
- 6 **The responsible authorities** in turn shall make their representations relating to one or more of the licensing objectives<sup>3</sup> and may be questioned by members of the Licensing Panel and/or applicant.
- 7 **Other Persons**<sup>1</sup> in turn shall make their representations relating to one or more of the licensing objectives<sup>3</sup> and may be questioned by members of the Licensing Panel and/or applicant.
- 8 **The responsible authorities** in turn may make a closing statement.
- 9 **The Other Persons** in turn may make a closing statement.
- 10 **The Applicant** may make a closing statement.
- 11 **The Licensing Panel** will then withdraw from the hearing to deliberate in private. In the event of uncertainty on any of the evidence, all parties will be recalled to the hearing whilst the point in question is clarified. In the event that the Licensing Panel has sought advice on points of law, the legal adviser shall explain to all parties what advice was given.
- 12 **All parties** shall be invited to return to the hearing when the Licensing Panel has completed its deliberations.
- 13 **The Chairman** shall announce the Panel's decision.

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<sup>1</sup> : i.e. those other than responsible Authorities who have submitted representations;

<sup>2</sup> : this is most likely where there are a number of persons making representations upon the same point. The fact that the Panel does not hear from all Other Persons will not mean that their representations are not taken into account, but rather that the strength of feeling is understood and the case will not gain weight through repetition;

3. the four licensing objectives are:- (i) The prevention of crime and disorder; (ii) Public Safety; (iii) The prevention of public nuisance; (iv) The protection of children from harm.