

APPLICATION FOR THE GRANT OF A PREMISES LICENCE: MALTHURST PETROLEUM LIMITED

Committee	Licensing Sub-Committee
Officer Contact	Jhini Mukherjee Licensing Officer Ex 01895 277230 (7230)
Papers with report	Appendix 1 - Officer's Recommendation Appendix 2(a) - Application for the grant of a premises licence including proposed plan 2(b) - Email from solicitor informing further amendment following the submission of the application to include 'late night sales through the night-pay window' Appendix 3(a) - Representation from the Statutory Authority (b) - Representations from Interested parties Appendix 4 - Photographs with index
Ward name	Eastcote & East Ruislip

1.0 SUMMARY

To consider an application for a premises licence in respect of MRH Eastcote, High Road, Eastcote, Pinner, HA5 2ET with representations received from **two** interested parties and **one** from a Statutory Authority.

2.0 RECOMMENDATION

2.1 As **Appendix 1**.

3.0 APPLICATION

The new premises licence application has been made by Malthurst Petroleum Limited for a petrol station forecourt store, MRH Eastcote, situated at High Road, Eastcote, Pinner, HA5 2ET. The application submitted is for a licence to sell alcohol 24 hours a day, 7 days a week and also to include the sale of late night refreshments; i.e. coffee, hot chocolate and a small amount of heated food. The entrance door to the shop will be closed to customers between the hours of 2300 and 0500. Any sales between these hours will be made through the night pay window.

3.1 Type of application applied for

New Premises Licence.

3.2 Description of the premises

The premises is a petrol station forecourt store which will sell a wide range of convenience store goods including 24 hours sale of alcohol and sale of late night refreshments. This site is still under construction at the time of hearing. The plan indicates that the entire premises is being sought for the sale of alcohol and the provision of late night refreshment.

There is a description of the premises available in **Appendix 1** (Officer's Recommendation) and photographs in **Appendix 5**.

3.3 A copy of the application form and premises plan is attached as **Appendix 2(a)**.

3.4 Licensable Activities

<u>Activity</u>		<u>Proposed for new premises licence</u>
Sale of alcohol	Consumption off the premises	x
Supply of Late Night Refreshment	Consumption off the premises	x

3.5 Licensable Activity Hours

	Proposed hours for Premises Licence Alcohol	Proposed hours for Premises Licence Late Night Refreshment
Monday	00:00 - 24:00	23:00-24:00 00:00 -05:00
Tuesday	00:00 - 24:00	23:00-24:00 00:00 -05:00
Wednesday	00:00 - 24:00	23:00-24:00 00:00 -05:00
Thursday	00:00 - 24:00	23:00-24:00 00:00 -05:00
Friday	00:00 - 24:00	23:00-24:00 00:00 -05:00
Saturday	00:00 - 24:00	23:00-24:00 00:00 -05:00
Sunday	00:00 - 24:00	23:00-24:00 00:00 -05:00

3.6 Opening Hours

	Proposed hours for premises licence
Monday	00:00 - 24:00
Tuesday	00:00 - 24:00
Wednesday	00:00 - 24:00
Thursday	00:00 - 24:00

Friday	00:00 - 24:00
Saturday	00:00 - 24:00
Sunday	00:00 - 24:00

3.7 Operating Schedule and Conditions

3.8 Section 18 of the operating schedule in **Appendix 2(a)** and the e-mail containing the further amendment to include 'late night sales through the night-pay window' in **Appendix 2(b)** demonstrate the steps the applicant proposes to take in order to promote the licensing objectives.

3.9 A full list of licence conditions which are consistent with the operating schedule as set out in section 18 are contained in **Appendix 1** (Officer's recommendation).

4.0 **CONSULTATION**

4.1 Closing date for representations
28th February 2017.

4.2 Public Notice published in local newspaper
08th February 2017 - Uxbridge Gazette.

5.0 **REPRESENTATIONS**

5.1 **RESPONSIBLE AUTHORITIES**

There was 1 representation from the Statutory Authority relating to S.176 of the Licensing Act 2003 which prohibits the sale of alcohol at motorway service areas and restricts the circumstances in which alcohol may be sold at garages. The representation is contained in **Appendix 3(a)**.

5.2 There are 2 representations from **Interested Parties**:

Interested Parties	Ground for Representation	Appendix
Ronald van den Hoogen	Nuisance and Crime and Disorder	Appendix 3(b)
Vince Balzan	Nuisance, Public safety and Crime and Disorder	Appendix 3(b)

6.0 **BACKGROUND INFORMATION**

6.1 Designated Premises Supervisor

The proposed designated Premises Supervisor is Nicola Jane Law, a personal licence holder under number PERS 0528 with Fenland District Council.

6.2 Other licensed premises nearby

There is one off-licensed local store within 100 metres which is currently licensed till 23:00 hours from Monday to Saturday and till 22:30 hours on Sundays. There is one public house licensed with terminal hours till midnight on weekdays and till 01:00 at weekends.

Map of the area and photos of the premises and the surrounding area are attached as **Appendices 4 and 5.**

6.3 There has been no recorded Members Enquires for this site.

7.0 OFFICER'S OBSERVATIONS

Observations

- This is an application to licence a petrol station forecourt store to sell alcohol 24 hours a day, 7 days a week and also to include the sale of late night refreshments in an area close to and adjacent to private dwellings. The applicant has proposed that the entrance door to the shop will be closed to customers between the hours of 2300 and 0500. Any sales between these hours will be made through the night pay window. The area subject to the application is on the ground floor level overlooked by houses from across the road. It may be noted that the premises is not located in a hotspot area for antisocial behaviour.

The relevant representations received mainly raise the following issues:

- **The prevention of crime and disorder-** Both representations addressed the crime and disorder objective as there are concerns over the sale of alcohol leading to a rise in antisocial behaviour and other crime, such as littering and vandalism to property. S. 182 of the Home Office published guidance refers to the Police as being the main source of advice on crime and disorder but in this case the Police did not raise any objection to this application. Furthermore, our Council's Licensing Policy and the Guidance both indicate that the hours that shops could generally be allowed to sell alcohol was to reflect the trading hours, unless there was a good reason to restrict this.
- **The prevention of public nuisance** - Both the representations received from interested parties refer to the public nuisance objective. The main concerns raised were directly connected to the proposed 24 hours sale of alcohol, 7 days a week. The main view was that the hours of operation were excessive for the location and would cause noise disturbance for residents in the surrounding area. The two representations also mentioned litter and a nuisance being caused by additional traffic outside the premises.
- **The promotion of public safety** - The public safety objective box has been checked in one of the representations but the concerns mentioned relate to 'prevention of crime and disorder' and 'prevention of public nuisance' objectives as above.

- **S.176 of the Licensing Act, 2003** - The representation from the licensing authority include reference to Section 176 of the Licensing Act 2003, relating to the primary use of the premises. S 176 of the Licensing Act 2003 provides that no premises licence 'has effect to authorise' the sale of alcohol from premises primarily used as a garage (i.e. the sale of fuel).

However, in the present case the premises will still be under construction at the time of the hearing and there is likely to be insufficient evidence to prove the primary use of the premises which is why the licensing authority as a responsible authority has recommended certain conditions to the applicant to demonstrate the primary use of the premises after the grant of the licence.

Further information is provided for members below in respect of section 176.

Members will be aware that S.176 of the Act states:

S. 176 Prohibition of alcohol sales at service areas, garages etc.

(1) No premises licence, club premises certificate or temporary event notice has effect to authorise the sale by retail or supply of alcohol on or from excluded premises.

(2) In this section "excluded premises" means—.....

(b) premises used primarily as a garage or which form part of premises which are primarily so used

Under S. 176 (4) (c), premises are used as a garage if they are used for one or more of the following—

(i) the retailing of petrol,

(ii) the retailing of derv,

(iii) the sale of motor vehicles,

(iv) the maintenance of motor vehicles

Though there is no definition of primary use in the Act or the Guidance, the case of *In the Night and Day Convenience store v Miskin Licensing Justices [2002]*, it was stated that "*Primary use given its everyday meaning would have to be a situation in our judgement where the intensity of use by customers to purchase fuel was overwhelming in comparison with other products*"

There are ways to determine primary use, which include assessment of financial turnover and intensity of use by customers; i.e. primary reason for footfall.

8.0 Relevant sections of S.182 Guidance

The Guidance issued by the Secretary of State under S182 of the Licensing Act 2003 states:

- At 5.21: "Section 176 of the 2003 Act prohibits the sale or supply of alcohol at motorway service areas (MSAs) and from premises which are used primarily as a garage, or are part of premises used primarily as a garage. Premises are used primarily as a garage if they are used for one or more of the following:
 - the retailing of petrol;
 - the retailing of derv;

- the sale of motor vehicles; and
 - the maintenance of motor vehicles.
- At 5.22: "It is for the licensing authority to decide, based on the licensing objectives, whether it is appropriate for that premises to be granted a licence, taking into account the documents and information listed in s.17(3) and (4) which must accompany the application."
 - At 5.23: "If a licence is granted in respect of a premises and the primary use of that premises subsequently changes (for example, the primary use becomes that of a garage rather than a shop) it would no longer be legal to sell alcohol on that premises. If a relevant representation is made, the licensing authority must decide whether or not the premises are used primarily as a garage. The licensing authority may ask the licence holder to provide further information to help establish what the primary use of the premises is."

9.0 Relevant sections of the Licensing Policy

Licensing Hours

- At Paragraph 21.1 it states that "Prior to the introduction of the Licensing Act 2003, it was believed that fixed and artificially early closing times (established under the Licensing Act 1964) were one of the key causes of rapid binge drinking prior to closing times and one of the causes of disorder and disturbance when large number of customers were required to leave the premises simultaneously".
- At 21.2, "The aim through promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through flexible opening times".
- At 21.3, "Arbitrary restrictions that would undermine the principle of flexibility will therefore be avoided. The four licensing objectives will be paramount at all times and the Council will always consider the individual merits of each case".
- At 21.4, "In accordance with guidance there is no fixed restriction on terminal hours for any particular areas of the borough. Such a restriction could cause the migration of patrons from one area to another and create the circumstances that the legislation is attempting to avoid. Each application will be dealt with on its merits. It is for the applicants to detail in their Operating Schedule exactly what times they intend to open and close the premises and what measures they will take to ensure that they do not cause nuisance or disturbance to their neighbours in the vicinity. The later the terminal hour applied for, the greater will be the need to address the issues of disturbance and nuisance".
- At 21.5, "Shops, stores and supermarkets licensed to sell alcohol will normally be allowed to do so for the full duration of their trading hours. Restrictions may be applied, for example where representations are made indicating the particular premises or patrons of the premises are linked to disorder and or disturbance".

Licence Conditions

- At 17.1, " Conditions on premises licences and club certificates are determined by:
 - a) The measures put forward on the Operating Schedule
 - b) Mandatory conditions within the Act

c) Measures decided at a hearing by the Licensing Sub Committee"

- At 17.2, "Any conditions attached to licences following relevant representations will focus on matters within the control of the Premises Licence Holder or Club Management Committees. They will address matters which have a direct impact on those living, working or engaged in normal activities in the vicinity, as well as patrons of the licensed premises. They will not be used as a means of attempting to attach responsibility to Premises Licence Holders or Club Management Committees for matters outside their reasonable control, such as anti-social behaviour once away from the premises or licensable activity".
- At 17.3, "The Licensing Authority will not impose standard conditions upon every licence issued, however it may have regard to model conditions produced by the Government and/or the Institute of Licensing and it may choose to impose these in appropriate circumstances".

10.0 LEGAL CONSIDERATIONS

LEGAL COMMENTS

Legal considerations relating to garages have been integrated into this Licensing Sub-Committee report.

In accordance with Guidance issued by the Secretary of State under S182 of the Licensing Act 2003, an application for a convenience store on a garage premises should be granted if no relevant representations have been received and the application meets the requirements of S17 of the Licensing Act 2003. If at a later stage it is established that the primary use of the premises is a garage, the prohibition outlined in S176 of the Licensing Act 2003 takes effect. This means the licence holder is no longer permitted by the Licensing Act 2003 to sell alcohol. Subsequent primary usage on the premises can be investigated by the Licensing Authority during inspections/compliance visits.

The Sub-Committee shall carry out its functions with a view to taking steps it considers appropriate for promoting the licensing objectives. The licensing objectives are:

- Prevention of crime and disorder
- Public Safety
- Prevention of public nuisance
- Protection of children from harm

The Sub-Committee must ensure that all licensing decisions:

- Have a direct relationship to the promotion of one or more of the four licensing objectives
- Have regard to the Council's statement of licensing policy
- Have regard to the Secretary of State guidance
- Must not be subject to a blanket policy to the extent that it is applied so rigidly that an exercise of discretion in each individual case is precluded

The Sub-Committee is advised that when considering applications for a new premises licence, regard must be had to any relevant representations that are made before taking

such steps (if any) as it considers necessary for the promotion of the licensing objectives. The steps are:

- grant the application
- grant the application subject to conditions the Sub-Committee considers necessary to promote the licensing objectives
- exclude from the scope of the licence any licensable activity(ies) to which the application relates
- refuse to specify a designated premises supervisor
- reject the application

Officers have provided the Sub-Committee with recommendations related to this application. Subject to the above-mentioned factors having been properly considered, the Sub-Committee may depart from the recommendations if there are good reasons for doing so. The Sub-Committee is advised that such departures could give rise to an appeal or judicial review.

In the event that the Sub-Committee is minded to impose the conditions recommended by the Licensing Authority, the Sub Committee is advised that as per the case of ***Green v Justices for the Inner London Area (13 June 1994) QBD (Divisional Court)***, if figures for financial turnover are used for determining primary usage, they must be net of duty and vat.

Alternatively, the Sub-Committee may wish to impose conditions based on the intensity of usage (which may be demonstrated by lists of customers classified by usage such as purchase of petrol, purchase of goods from convenience store, purchase of motor maintenance items) as outlined in the case of ***R v Liverpool Crown Court, ex parte Kevin John Goodwin (17 December 1998) QBD (Divisional Court)***. The evidence towards the intensity of use, like customer lists will be of importance to establish if the premises fall within the definition of 'excluded premises'.