

LICENSING AND APPEALS SUB-COMMITTEE 21st September 2010
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*PART 1 – PUBLIC DOCUMENT	AGENDA ITEM No.
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LICENSING ACT 2003

**APPLICATION BY CHRISTOPHER JOHN KING AND SUSAN GARDNER FOR
THE GRANT OF A PREMISES LICENCE IN RESPECT OF WESTMILL FILLING
STATION, BEDFORD ROAD, HITCHIN, HERTFORDSHIRE, SG5 2UG.**

**REPORT OF THE STRATEGIC DIRECTOR OF
PLANNING, HOUSING AND ENTERPRISE**

1. BACKGROUND

- 1.1 No premises licence under the Licensing Act 2003 is currently in place for the premises.
- 1.2 The applicants are currently operating the premises as a filling station with a small convenience store attached.

2. APPLICATION

- 2.1 The application is for the grant of a premises licence under Section 17 of the Licensing Act 2003.
- 2.2 The licensable activities and hours applied for are as follows:

- 2.3 Following negotiation with Hertfordshire Constabulary during the consultation period, the applicants amended their application which enabled Hertfordshire Constabulary not to make any representation.
- 2.4 The agreed amendments now form part of the application and should be read in conjunction with the initial application form provided at section 2.2 of this report.
- 2.5 The agreed amendments are as follows:

2.6 To assist the Sub-Committee, the following is a summary of the application (as amended) that is being considered today:

3. APPLICATION PROCESS

- 3.1 On 27th July 2010, Christopher John King and Susan Gardner made an application for the grant of a Premises Licence.
- 3.2 The Applicants served copies of this application to the Police Authority and the other Responsible Authorities
- 3.3 Public notices were displayed on the premises in accordance with the requirements of the Licensing Act 2003 and were exhibited for a period of not less than twenty-eight (28) days. A newspaper advertisement was placed in The Hitchin Advertiser newspaper dated 4th August 2010 in accordance with the Act.

4. REPRESENTATIONS

- 4.1 No representation was received from Hertfordshire Constabulary on the basis of the agreed amendments as detailed in section 2.5 of this report.
- 4.2 No representations were received from any other Responsible Authority.
- 4.3 Eight representations were received from Interested Parties.
- 4.4 The Council's Scheme of Delegation in respect of the Licensing Act 2003 requires the Licensing Officer to determine whether a representation is relevant as specified by the Act.
- 4.5 Two representations were deemed to be 'not relevant' by the Senior Licensing Officer as they were submitted by persons not meeting the requirements of an 'interested party' as prescribed by the Licensing Act 2003. A further representation was received outside of the statutory consultation period. These representations have not been included with this report.
- 4.6 In respect of the 'relevant representations', section 4.4 of this report still applies to the specific content of each individual representation. Where representations include paragraphs that are not relevant to the Licensing Act 2003, these paragraphs have been clearly marked as 'not relevant' by the Senior Licensing Officer and should not be considered as part of the determination process. Interested parties must not refer to these paragraphs in any oral presentation at the hearing.
- 4.7 The five relevant representations are as follows:

- 4.8 The Applicants have been served with a copy of the representations.
- 4.9 The Applicants and the 'relevant' Interested Parties have been invited to attend the hearing to present their respective cases. They have been advised that they may be legally represented and of the Committee Hearing procedure.

5. OBSERVATIONS

- 5.1 In determining this application, the Sub-Committee must have regard to the representations and take such steps, as it considers necessary for the promotion of the Licensing Objectives.
- 5.2 In making its decision, the Licensing and Appeals Sub-Committee must act with a view to promoting the Licensing Objectives. It must also have regard to the Licensing Authority's Statement of Licensing Policy and National Guidance.
- 5.3 The Licensing and Appeals Sub-Committee has the following options when issuing the Decision Notice:
- i) Grant the Application as made
 - ii) Grant the Application with conditions. Conditions should only be added where they are necessary to promote the Licensing Objectives.
 - iii) Refuse the Application.

6. LICENSING POLICY CONSIDERATIONS

- 6.1 The following paragraphs from the Council's Statement of Licensing Policy are relevant to this application.

4.1

Licensing is about regulating the carrying on of licensable activities on licensed premises, by qualifying clubs and at temporary events within the terms of the Act. The Council may attach conditions to licences issued under the Act and these must be focussed on matters which are within the control of the individual licence holders and others in possession of relevant authorisations.

4.2

The Council recognises that licensing law is not the primary mechanism for the general control of individuals once they are away from a licensed premises and, therefore, beyond the direct control of the licensee(s) or certificate holder(s) Beyond the vicinity of the premises, an individual who engages in anti-social behaviour is accountable under law in their own right. Nonetheless, it is a key aspect of such control and licensing law will always be part of a holistic approach to the management of the evening and night-time economy in North Hertfordshire.

4.3

In addressing these matters the Council will primarily focus on the direct impact of the activities taking place on, or in the immediate vicinity of, the licensed premises on members of the public living, working or otherwise engaged in activities in the vicinity.

5.1

The Council recognises that each application must be considered on its own merits and any conditions attached to licences and certificates must be tailored to the individual style and characteristics of the premises and activities concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises. Standardised conditions must be avoided and will only be lawful where they are deemed necessary to promote the licensing objectives in response to relevant representations.

5.2

Conditions will only be imposed when they are necessary for the promotion of the Licensing Objectives and will focus upon matters within the control of the individual licensee such as the premises, places or events being used for licensable activities. Conditions are likely to be focused towards the direct impact of those activities on persons

8.1

The Council recognises the diversity of premises that will be licensed under the Act. The premises will include theatres, cinemas, restaurants, pubs, nightclubs, cafes, take-away shops, community halls and schools. The Council will not ordinarily seek to limit the access by children to any premises unless it is considered necessary for the prevention of physical, moral or psychological harm to them.

7. RELEVANT EXTRACTS OF STATUTORY GUIDANCE

- 7.1 The following paragraphs from the Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003 (March 2010) are relevant to this application.

1.16

The licensing authority should only impose conditions on a premises licence or club premises certificate which are necessary and proportionate for the promotion of the licensing objectives. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties on the premises licence holder or club. It is only where additional and supplementary measures are necessary to promote the licensing objectives that necessary, proportionate conditions will need to be attached to a licence.

2.4

The essential purpose of the licence or certificate in this context is to regulate behaviour on premises and access to them where this relates to licensable activities and the licensing objectives. Conditions attached to licences cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff or agents, but can directly impact on the behaviour of customers on, or in the immediate vicinity of, the premises as they seek to enter or leave.

2.43

The Secretary of State intends that the admission of children to premises holding a premises licence or club premises certificate should normally be freely allowed without restricting conditions unless the 2003 Act itself imposes such a restriction or there are good reasons to restrict entry or to exclude children completely. Licensing authorities, the police and other authorised persons should focus on enforcing the law concerning the consumption of alcohol by minors.

2.47

Conditions, where they are necessary, should reflect the licensable activities taking place on the premises and can include:

- *where alcohol is sold, requirements for the production of proof of age cards or other age identification before sales are made, to ensure that sales are not made to individuals under 18 years (whether the age limit is 18 or 16 as in the case of the consumption of beer, wine and cider in the company of adults during a table meal);*
- *restrictions on the hours when children may be present;*
- *restrictions on the presence of children under certain ages when particular specified activities are taking place;*
- *restrictions on the parts of the premises to which children may have access;*
- *age restrictions (below 18);*
- *restrictions or exclusions when certain activities are taking place;*
- *requirements for accompanying adult (including for example, a combination of requirements which provide that children under a particular age must be accompanied by an adult); and*
- *full exclusion of people under 18 from the premises when any licensable activities are taking place*

5.23

Section 176 of the 2003 Act prohibits the sale or supply of alcohol from premises that are used primarily as a garage, or are part of premises used primarily as a garage. Premises are used 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.*

5.24

The licensing authority must decide whether or not any premises is used primarily as a garage. The approach endorsed so far by the courts is based on intensity of use to establish primary use. For example, if a garage shop in any rural area is used more intensely by customers purchasing other products than by customers purchasing the products or services listed above, it may be eligible to seek authority to sell or supply alcohol.

5.25

Where there is insufficient evidence to establish primary use, it is for the licensing authority to decide whether to grant the licence and deal with any issues through enforcement action or to defer granting the licence until the primary use issue can be resolved to their satisfaction.

8. LICENSING OFFICER COMMENTS

8.1 Section 176 of the Licensing Act 2003 states:

176 Prohibition of alcohol sales at service areas, garages etc. E+W

- (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—*
 - (a) *premises situated on land acquired or appropriated by a special road authority, and for the time being used, for the provision of facilities to be used in connection with the use of a special road provided for the use of traffic of class I (with or without other classes); or*
 - (b) *premises used primarily as a garage or which form part of premises which are primarily so used.*
- (3) *The Secretary of State may by order amend the definition of excluded premises in subsection (2) so as to include or exclude premises of such description as may be specified in the order.*
- (4) *For the purposes of this section—*
 - (a) *“special road” and “special road authority” have the same meaning as in the Highways Act 1980 (c. 66), except that “special road” includes a trunk road to which (by virtue of paragraph 3 of Schedule 23 to that Act) the provisions of that Act apply as if the road were a special road,*
 - (b) *“class I” means class I in Schedule 4 to the Highways Act 1980 as varied from time to time by an order under section 17 of that Act, but if that Schedule is amended by such an order so as to add to it a further class of traffic, the order may adapt the reference in subsection (2)(a) to traffic of class I so as to take account of the additional class, and*
 - (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.*

- 8.2 Paragraph 5.25 of the Guidance, as reproduced above, provides the licensing authority with the opportunity to defer the granting of a licence until primary use has been established where insufficient evidence has been produced to the licensing authority to allow them to satisfactorily determine this issue.
- 8.3 A recent High Court case, R (on the application of) Murco Petroleum Limited v Bristol City Council [2010] EWHC 1992 (Admin), clarified the interpretation of section 176 of the Licensing Act 2003. As this is a High Court judgement, it binds all lower courts.
- 8.4 The key points of the case were:
- (i) If the licensing authority's discretion is engaged by the submission of a relevant representation, the licensing sub-committee is entitled to request information from the applicant regarding primary use of the premises in order to determine the 'primary use' question.
 - (ii) As a matter of law, trading figures can be used to determine the issue of primary use under section 176.
 - (iii) If there is insufficient information to satisfactorily address the licensing authority's questions, the hearing can be adjourned to a specified date. Further adjournments to specified dates would be permitted until such time as the question is satisfactorily answered.

9. CONTACT OFFICERS

- 9.1 Steve Cobb
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