

Representation following the Application for a New Premises Licence at Morrisons Daily Petrol Filling Station, Lysander Road, Yeovil BA20 2AU

Assistant Director:

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Purpose of the Report

To inform members that an application has been received from WM Morrison Supermarkets Ltd, for a premises licence to be granted under the Licensing Act 2003 for Morrisons Daily Petrol Filling Station, Lysander Road, Yeovil BA20 2AU.

Recommendation

To determine the granting of the premises licence in accordance with the options detailed later in the report.

Background

The Council is the authority responsible for the issue of Premises Licences issued under Section 18 of the Licensing Act 2003.

The Licensing Manager has delegated authority to determine a Premises Licence application, subject to no objections being received from a Responsible Authority or Other Persons. In this case, relevant representations have been received from two Responsible Authorities and an 'other person', necessitating the convening of a hearing.

Licensing Objectives

The licensing objectives are:

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

The licensing objectives are to be considered paramount and the Council has a duty to promote them in its decision making process. An application will not be refused in whole or part or any conditions attached except those offered by the applicant or required by law except where appropriate to promote the licensing objectives.

Application

A copy of the application form is enclosed with the agenda; it does not however include a copy of the plan of the premises, which is available for inspection at the Council offices, Brympton Way, Yeovil.

The details of the application are summarised as follows:

- Applicant: WM Morrison Supermarkets Ltd

Licensable activities applied for:

Late Night Refreshment – Indoors and Outdoors

| Day | Start Time | Finish Time |
|-----------|------------|-------------|
| Monday | 23:00 | 05:00 |
| Tuesday | 23:00 | 05:00 |
| Wednesday | 23:00 | 05:00 |
| Thursday | 23:00 | 05:00 |
| Friday | 23:00 | 05:00 |
| Saturday | 23:00 | 05:00 |
| Sunday | 23:00 | 05:00 |

Seasonal Variations: None

Non-Standard Timings: None

Supply of Alcohol – Off Sales Only

| Day | Start Time | Finish Time |
|-----------|------------|-------------|
| 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 |

Seasonal Variations: None

Non-Standard Timings: None

Hours Open to the Public – Not a licensable activity, but shown as part of the application.

| Day | Start Time | Finish Time |
|-----------|------------|-------------|
| 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 |

Seasonal Variations: None

Non-Standard Timings: None

Additional steps put forward by the applicant to comply with licensing objectives. Please see page 11 of the application form (these where appropriate, will become conditions of the licence, subject to the licence being granted, and are in addition to any further conditions imposed by the Licensing Committee).

Evidence that advertising/notice requirements have been complied with:

- The applicant has confirmed that notice(s) were displayed at premises for the requisite period; a licensing enforcement officer visited the premises and confirmed the notice(s) were displayed at the time of his visit. A further notice was placed in the Western Gazette newspaper on 27 October 2016 of which we have a copy.

Representations – Responsible Authorities

- A representation was made by Nigel Marston on behalf of the Licensing Authority
- A representation was made by Mrs King on behalf of the Chief of Police for Avon & Somerset

Representations – Other Persons

A representation was made by a member of the public as an ‘Other Person’

Relevant Observations

Section 176 of the Licensing Act 2003 and its Explanatory Notes are attached as Appendix One for the consideration of members as it deals with the prohibition of alcohol sales at service areas and garages etc.

The Guidance¹ to the Licensing Act 2003 states the following:

“Garages and motorway service areas”

- 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 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.
- 5.22 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 section 17(3) and (4) which must accompany the application.
- 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 must decide whether or not the premises are primarily used 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.

The Licensing Policy of South Somerset District Council² states the following:

¹ Amended Guidance Issued under section 182 of the Licensing Act 2003, Published March 2015

² Published January 2014, Edition 5

4.2 Garages

- 4.2.1 With regard to the licensing of garages, and/or filling stations, Section 176 of the 2003 Act prohibits the sale or supply of alcohol from premises that are used primarily as a garage. However, the Licensing Authority will use the court's approach based on intensity of use, to establish primary use. Where such applications are submitted, the Licensing Authority will expect sufficient relevant evidence to accompany the application form to prove the issue of primary use. Where there is any doubt the Licensing Manager will determine whether or not any premises are used primarily as a garage.

Further Information

The Licensing Authority considered the question of primary use in March 2014 and also the Provision of Services Regulations 2009; in this case it granted the part of application relating to late night refreshment but refused the part of the application that relates to off sales for the supply of alcohol; however each case must be judged on its own merits and facts.

The premises (providing planning permission has been granted) may open 24 hours each day of the week for fuel and items other alcohol without a premises licence; it may also sell hot food and drink from 05:01 to 23:00 without requiring a premises licence.

Another premises which uses the same road entrance and exit also has a 24 hour premises licence for late night refreshment; however again each case must be judged on its own merits and facts.

Considerations

In determining the Application with a view to promoting the licensing objectives in the overall interests of the community, the Committee must have regard to and give appropriate weight to the following considerations:

- Any relevant and valid representation (including supporting documentation received)
- The Latest Guidance issued under s182 of the Act
- The Statement of Licensing Policy issued in January 2014
- The steps appropriate to promote the licensing objectives as set out in s18(4)
- Human Rights considerations in particular Article 6, Article 8 and Article 1 of Protocol 1

Options

Firstly, the Sub-Committee consider the application for a new Premises Licence and make determinations in respect of this application, namely to:

- a) Consider whether premises would be "excluded premises" as defined under Section 176 Licensing Act 2003 as:
 - i) premises used primarily as a garage or which form part of premises which are primarily so used. (if so determined then (b) below for the late night refreshment element of the application. If determined that premises are not primarily a garage and therefore not 'excluded premises' to continue with (b) below for both the retail sale of alcohol for consumption off the premises and the provision of late night refreshment)

- b) i) grant the application as submitted, subject to any Mandatory Condition required;
ii) modify the conditions of the licence;
iii) exclude any of the licensable activities to which the application relates;
iv) to refuse to specify a person in the licence as the premises supervisor;
v) reject the application.

Right of Appeal

Schedule 5 of the Licensing Act 2003 sets out the rights and procedures for making appeals against the decision of the Licensing Authority:

Where the Licensing Authority has rejected an application for a premises licence, the applicant may appeal to the Magistrates' Court against the decision to reject.

Where the Licensing Authority has granted the licence, the holder of the licence may appeal to the Magistrates Court against any decision to impose conditions on the licence that are consistent with the operating schedule or imposed where having regard to any relevant representations, are considered appropriate to promote the licensing objectives.

Where the Licensing Authority has granted the licence subject to the exclusion of any of the licensable activities or refused to specify a person as the premises supervisor, the holder of the licence may appeal to the Magistrates Court against the decision.

Where a person who made a relevant representation desires to contend that the licence ought not to have been granted, or that on granting the licence, the Licensing Authority ought to have imposed different or additional conditions, or ought to have taken a step to exclude a licensable activity or refused to have specified a person as the premises supervisor, he may appeal against the decision to the Magistrates Court.

The appellant commences the appeal by giving a notice of appeal to the designated officer for the Magistrates' court within 21 days beginning with the day on which the applicant was notified by the Licensing Authority of the decision appealed against.

On determining the appeal, the court may,

- Dismiss the appeal
- Substitute for the decision appealed against any other decision which could have been made by the Licensing Authority; or
- Remit the case to the Licensing Authority to dispose of it in accordance with the direction of the court.

and may make such order as to costs as it thinks fit.

Background Papers

Licensing Act 2003

SI 2005 No. 44 Licensing Act 2003 (Hearings) (Regulations) 2005

SI 2005 No. 42 Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005

SI 2010 No.860 Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010

The Latest Guidance issued under section 182 of the Licensing Act 2003.

The Statement of Licensing Policy for South Somerset District Council January 2014
