

Somerset Council
Licensing Subcommittee – 5th January 2024



Consideration of an application for a premises licence

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Division / Local Member: Licensing & Regulatory Committee

1. Summary

- 1.1 An application has been made by Euro Garages Limited, represented by Gosschalks LLP, in accordance with the Licensing Act 2003 (LA2003), for the grant of a premises licence in respect of Asda Express PFS Taunton, Priory Bridge Road, Taunton, TA1 1QD.
- 1.2 The Licensing Authority has received relevant representations and must therefore hold a hearing for the Licensing Subcommittee to determine the application.

2. Issues for consideration/recommendations

- 2.1 The Subcommittee must, having regard to the representations, take one of the following steps as it considers appropriate for the promotion of the licensing objectives:
 - (a) Grant the licence subject to those conditions which are mandatory, and such conditions which are consistent with the operating schedule within the application (modified to such extent as the Authority considers appropriate for the promotion of the licensing objectives).
 - (b) Exclude from the scope of the licence any of the licensable activities to which the application relates.

(c) Refuse to specify a person in the licence as the premises supervisor.

(d) Reject the application.

2.2 In determining the application, the Subcommittee must have regard, and give appropriate weight, to the following:

- Any relevant representation (including supporting documentation received).
- Revised guidance issued under section 182 of the LA2003 by the Home Office (August 2023).
- The Licensing Authority’s Statement of Licensing Policy, published in September 2023.
- Human Rights considerations, in particular Article 6, Article 8, and Article 1 of Protocol 1.

3. Background

3.1 The Licensing Authority received an application for the grant of a premises licence in respect of Asda Express PFS Taunton, Priory Bridge Road, Taunton, TA1 1QD on the 3rd of November 2023. A copy of the full application is attached at **Appendix 1**, and the plan of the proposed licensed premises at **Appendix 2**.

3.2 The premises is described within the application as a “*Convenience store/petrol filling station*”. The applicant is seeking authorisation to provide licensable activities seven days a week, in the form of late night refreshment between the hours of 23:00 and 05:00 the following morning and the supply of alcohol for consumption off the premises 24 hours a day.

3.3 Under section 176 of the LA2003, premises licences (as well as club premises certificates and temporary event notices) do not have effect to authorise the sale by retail or supply of alcohol on or from ‘excluded premises’, being:

- (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.

- 3.4 In respect of section 176, the Licensing Authority's Statement of Licensing Policy states, at paragraph 4.2.1, that the authority *"will use the court's approach based on intensity of use, to establish primary use."*
- 3.5 The Licensing Authority emailed Gosschalks LLP on the 3rd of November to request additional information to clarify the intensity of use of the premises. On the 7th of November, the Licensing Authority received a reply from Richard Taylor of Gosschalks LLP, stating:
- 3.6 *"I can confirm that on an analysis of customer use over 2022, 45% of customer transactions were for fuel alone meaning that these premises are not currently primarily used as a garage. Furthermore, my client, (who has a wealth of experience operating convenience premises which also sell fuel) expects the gap to widen in the event that the premises licence is granted as shop transactions will increase by around 20%. The projections for this store moving forward show that around 35% of customers will use the premises for fuel sales only."*
- 3.7 The Licensing Authority received an email from Gosschalks LLP on the 15th of November, advising that the applicant had agreed specific conditions with the Police which would, subject to the licence being granted, replace the steps offered in the operating schedule part of the application. These are shown at **Appendix 3**; 'conditions consistent with the operating schedule'.
- 3.8 Three relevant representations were received during the representation period from 'other persons'. This term refers to any individual, body or business who is entitled to make a representation in relation to applications for the grant, variation, minor variation or review of a premises licence. One representation was subsequently withdrawn. Copies of the two outstanding representations are attached at **Appendix 4**.
- 3.9 Following the representation from Denise and Peter Gange, Gosschalks LLP responded to highlight the following points:
- *"These premises already trade 24 hours a day – the effect of the grant therefore would not change the opening hours of the premises, it would simply enable the premises to display alcohol products for sale"*

alongside the household goods, groceries etc that will be offered for sale when these premises are converted to an Asda convenience store (currently scheduled for March 2024)

- *The grant of the licence would not change the delivery times or frequency of deliveries to the store*
- *Conditions have been agreed with the police which provide inter alia for CCTV coverage, staff training, the security of staff and the operation of a night hatch if there is only one member of staff on duty*
- *The request for late night refreshment is to enable the premises to sell hot drinks/coffee – there will be no hot food provision*
- *The police (nor any other responsible authority) do not object to the application.”*

3.10 Denise and Peter in turn responded, via email, to confirm that they did not wish to withdraw their representation, highlighting that the “...shop is forced to close at 8.00pm at present due to shoplifting and minimal staff”, adding that they felt the supply of alcohol after midnight was “...most certainly going to cause problems with noise and possible drunkenness”. They pointed out that the area is residential.

3.11 On the 15th of December, Gosschalks contacted the Licensing Authority on behalf of the applicant to propose an amendment to the application, specifically the hours being sought. In the email, Richard Taylor wrote:

3.12 *“I have started to prepare my submissions for the hearing on 5th January and in doing so, have been discussing the issues raised in the letters of representation with my client.*

3.13 *“My client always strives to be a good neighbour and notwithstanding the fact that the police do not object to a 24 hour licence to sell alcohol, my instructions are to offer to reduce the hours for alcohol sales to 06.00 until midnight every day if this means that the representations will be withdrawn and we can avoid the time and expense of the hearing on 5th January.*

3.14 *“I would be extremely grateful if you could pass this offer onto those that have made representations.*

3.15 *“Please note, the offer is condition. My instructions are to reduce the hours sought for alcohol sales to 06.00 to midnight only if it means that this*

application will be granted without the need for a hearing. If we proceed to a hearing then my instructions are to proceed with the application for 24 hour off sales of alcohol.”

- 3.16 The proposal was relayed to Denise and Peter Gange, and Cllr Tooze on the 15th of December.
- 3.17 At the time of writing this report, the Licensing Authority had not yet received replies to the proposal. The Licensing Officer will provide a verbal update to the Subcommittee at the hearing, should it go ahead, along with providing an update on any points raised by any of the parties in their responses to the notices of hearing.

4. Right of appeal

- 4.1 All relevant parties have the right to appeal to the Magistrates Court if aggrieved by the decision of the Licensing Authority. This must be done within 21 days of being notified in writing of the relevant decision.

5. Appendices

1. Application.
2. Plan of premises.
3. Conditions consistent with the operating schedule.
4. Representations from other persons.