

Minutes of: LICENSING HEARING SUB COMMITTEE

Date of Meeting: 5th August 2024, 1.30pm

Present: Councillor I. Rizvi (in the Chair)
Councillors G. Marsden and G. McGill

J. Ashworth (Democratic Services)
M. Bridge (Licensing Unit Manager)
M. Cunliffe (Democratic Services)
C. Riley (Legal Services)

Also in attendance: Mr R Taylor (Legal representative for Asda)
Miss L Johnston (Asda representative)
Mr B Little (Representor)

Public Attendance: The Hearing was held virtually and interested members of the public were provided with a link to access the hearing online via Microsoft Teams or could be telephoned into the meeting via audio only. No other members of the public or press were in virtual attendance.

1 APOLOGIES FOR ABSENCE

Apologies for absence were submitted by Mr S. Donohue, L. Buggie (Public Health), C. Smith (Head of Public Protection) and B. Thomson (Assistant Director of Operations Strategy).

2 DECLARATIONS OF INTEREST

There were no declarations of interest made.

3 MINUTES OF THE LAST MEETINGS

The minutes of the last Licensing Hearing Sub Committee meetings held at 1.30pm on the 17th July and 1.00pm on the 19th July 2024 were attached to the agenda.

Resolved:- That the minutes of the Licensing Hearing Sub Committee held at 1.30pm on the 17th July and 1.00pm on the 19th July 2024 be approved as a correct record.

4 APPLICATION FOR A PREMISES LICENCE TO BE GRANTED UNDER THE LICENSING ACT 2003 IN RESPECT OF ASDA EXPRESS PFS BLACKFORD BRIDGE, MANCHESTER ROAD, BURY, BL9 9ST

The Licensing Authority received an application for a Premises Licence to be granted under the Licensing Act 2003 in respect of ASDA Express PFS Blackford Bridge, Manchester Road, Bury, BL9 9ST.

The applicant for the licence is Euro Garages Limited, ASDA House, Great Wilson Street, Leeds, Yorkshire, LS11 5AD and the proposed Designated Premises Supervisor (DPS), in respect of the above premises, is Mr Neil Eccles, 4 Chasewater, Sandymoor, Runcorn, Cheshire, WA7 1UJ. The application was attached at Appendix 1 in the agenda pack.

The Applicant had complied with all the necessary procedural requirements laid down by the Act.

The Licensing Unit Manager presented the report and as part of the statutory process the Responsible Authorities and interested parties are entitled to make representations in relation to the grant of a licence. Where representations are made and not withdrawn Members are required to determine them

Representations must be relevant to the licensing objectives defined within the Act. The objectives are:-

- the prevention of crime and disorder
- public safety
- prevention of public nuisance and
- protection of children from harm

The application is for the grant of a Premises Licence under Part 3 of the Licensing Act 2003.

Opening Times:

Monday to Sunday – 00:00 till 00:00 (24 hours)

Supply of Alcohol (off the premises):

Monday to Sunday– 00:00 till 00:00 (24 hours)

Late Night Refreshment (On and off the premises)

Monday to Sunday– 23:00 till 05:00

The conditions contained in the operating schedule submitted by the applicant were contained at Appendix 2 in the agenda packs.

One representation had been received from Public Health Department in their capacity as a Responsible Authority against this application. The Responsible Authority has been invited to make their representations at the hearing. The representation was attached at Appendix 3 in the agenda packs.

Eight relevant representations from interested parties had been made against the Application. The representations were attached at Appendix 4 in the agenda packs.

The Proposed Variations below were provided to the Committee following consultations and agreement with the Council's Public Health Department. As a result of these amendments the representation from Public Health had been withdrawn and they did not attend the meeting.

Opening Times:

Monday to Sunday – 00:00 till 00:00 (24 hours)

Supply of Alcohol (off the premises):

Monday to Sunday– 06:00 till 00:00

Late Night Refreshment- Hot drinks only (On and off the premises)

Monday to Sunday– 23:00 till 05:00

All sales between 2200 and 0600 will be made through the night hatch

Members of the public will not be permitted to enter the premises between 2200 and 0600. For the avoidance of doubt, this does not apply to officers of the emergency services

After hearing the representations made and the evidence presented, Members are obliged to determine the application with a view to promoting the licensing objectives and having regard to the Authority's Licensing Policy and National Guidance.

The Secretary of State's Guidance to the Licensing Act 2003 is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.

Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. The Guidance is therefore binding on all licensing authorities to that extent. However, the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons.

Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.

In making its decision with regard to this application hearing, the steps the Sub-Committee can take are:

- To grant the application in the terms requested
- To grant the application subject to conditions
- To amend or modify existing or proposed conditions
- To refuse the application

All licensing determinations should be considered on the individual merits of the application.

The Sub-Committee's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. Findings on any issues of fact should be on the balance of probability.

It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal.

The Sub-Committee was asked to determine what steps, as set out above, are appropriate for the promotion of the licensing objectives.

The Licensing Unit Manager reminded Members that there was still a process for a review if the licensing objectives were not promoted.

Mr Taylor addressed the sub committee and informed Members that Euro Garges was owned and operated by Asda. He had legally represented Asda since 2005 and had never been required to sit on a licensing review meeting as the companies policies, procedures and training was to a quality standard. Asda had many stores with millions of customers and this

was the third application in the Bury area for an Asda Express and the other two had been granted following discussions with GMP and public health officials.

Mr Taylor stated there were no complaints by members of the public or issues from responsible authorities. The application was to add the ability for the Express store to sell a bottle of wine or pack of beer along with the grocery range available. Packs of beer would not be split to sell individual containers and it was intended to compliment the convenience store and not act like an off licence. There would be a Greggs bakery on the site but this only opened at 6.00am and did not trade late into the evening.

Mr Taylor explained that the late night refreshment element of the licence was for a coffee machine. He stressed that the licensing objectives would be met with CCTV coverage, staff training including the challenge 25 scheme. High value spirits would be kept behind the counter and there would be no sales of miniatures, white cider and port which was linked to on street drinking habits.

Sales between 22:00 till 06:00 would be conducted via the night hatch, excluding Members of the emergency services. Public health had withdrawn their representation following these amends and GMP had no concerns. In reply to representations from local residents the supply of alcohol would cease at midnight and there were no concerns about ASB in the area or the premises attracting drink drivers. A litter pick would be conducted twice daily and the DPS named on the application was in charge of all Asda licences and sales would not be conducted until training had been provided to staff.

A Member asked about the litter picking and it was stated this would cover the forecourt and immediate area outside the premises.

Mr Brian Little, a representor had joined the virtual meeting via the telephone and stated there had been an attempted robbery of the cash machine some time ago. He had concerns about an increase in noise, the volume of litter that may end up in his and neighbouring gardens. He felt ASB may increase and questioned the CCTV system and if it would cover the surrounding side streets which may capture the individuals dropping litter. Mr Taylor confirmed the cameras would not cover nearby houses and this would require permission from the ICO.

The Licensing Unit Manager advised Members that all the representations from other people who were not in attendance, could be found in the agenda packs.

Mr Taylor in summing up referred to licensing guidelines, no representations from the responsible authorities along with no evidence of formal disorder in the local area.

The Sub-Committee then duly retired to consider the application.

The Members of the Panel were advised by the Legal Officer as to their duties under Section 4 of the Licensing Act 2003 to at all times consider the promotion of the Licensing Objectives, these being:

- a) the prevention of crime and disorder
- b) public safety
- c) the prevention of public nuisance
- d) the protection of children from harm

The Members were also advised of their duties in carrying out those functions in relation to the relevant provisions of the national guidance and the Council's licensing policy statement.

In addition, Members were advised to give appropriate weight to the steps that are appropriate to promote the licensing objectives together with relevant representations presented by all parties.

Delegated decision

All of the evidence was considered with care, and it was established that having understood the application and equally noting and understanding the representations, the Sub-Committee found there were no causes for concern so far as the promotion of the licensing objectives were concerned.

It was therefore agreed unanimously that the Sub- Committee **grant the application for a Premises Licence in the amended terms requested** and subject to the following conditions:-

Operating Schedule

This licence is granted subject to any Mandatory Conditions imposed by the Licensing Act 2003, and conditions volunteered on the application form to be undertaken by the applicant and where necessary, conditions imposed by the Licensing Authority in order to promote the Licensing Objectives.

Mandatory Conditions:

a No supply of alcohol may be made under the Premises Licence at a time when there is no Designated Premises Supervisor (DPS) in respect of the Premises Licence OR at a time when the Designated Premises Supervisor does not hold a Personal Licence or his/her Personal Licence has been suspended.

b Every supply of alcohol under the Premises Licence must be made or authorized by a person who holds a Personal Licence.

Mandatory Conditions pursuant to The Licensing Act 2003 Mandatory Licensing Conditions (Amendment) Order 2014

3. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

(2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

(3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either:

(a) a holographic mark, or

(b) an ultraviolet feature.

Definition:

Responsible person - as defined by section 153 (4) Licensing Act 2003 -

(a) In relation to a licensed premises -

- (i) The holder of a premises licence in relation to a premise
- (ii) The designated premises supervisor (if any) under such a licence.
- (iii) Any individual aged 18 or over who is authorized for the purposes of this section by such a holder or supervisor.

(b) In relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables him to prevent the supply in question.

The Licensing Act 2003 (Mandatory Conditions) Order 2014

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

2. For the purposes of the condition set out in paragraph 1-

- (a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979
- (b) "permitted price" is the price found by applying the formula-

$$P = D + (D \times V)$$

Where-

- (i) P is the permitted price,
- (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
- (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
- (c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence-
 - (i) the holder of the premises licence,
 - (ii) the designated premises supervisor (if any) in respect of such a licence, or
 - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
- (d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
- (e) "Value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

4. (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.

(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Licensing objectives

General

- 1/ Staff shall be trained in the premises licence holder's procedures which include liquor licensing and all checkout operators shall have additional training in the sale of alcohol.
- 2/ No miniature bottles of spirits of 20cl or below shall be sold from the premises. Please note this does not apply to pre packaged gift packs which may contain a spirit miniature
- 3/ All sales between 2200 and 0600 will be made through the night hatch
- 4/ Members of the public will not be permitted to enter the premises between 2200 and 0600. For the avoidance of doubt, this does not apply to officers of the emergency services

The prevention of crime and disorder

- 5/ A CCTV system will be installed and maintained at the premises. Cameras will cover internal areas and the external area immediately in front of the store. The system will be capable of continuously recording and copies of such recordings shall be kept for a period of not less than 31 days and handed to the Police or authorised person upon production of a compliant 'Access Request'.
- 6/ All spirits will be displayed behind the counter.

Public safety

- 7/ The premise licence holder seeks to comply with the requirements of the health and safety legislation.

The prevention of public nuisance

- 8/ The provision of late night refreshment will be limited to the sale of hot drinks only.

The protection of children from harm

- 9/ The store will have a till prompt system for alcohol products.
- 10/ When prompted, staff will adopt a Challenge 25 proof of age scheme.
- 11/ Only recognised forms of photographic identification such as Passport, Photo Driving Licence, 'Proof of Age' card, Military ID or any other form of identification agreed with the police will be accepted as proof of age. If the appropriate proof of age is not produced there will be no sale.
- 12/ Notices are to be prominently displayed advising customers of the Challenge 25 policy.

COUNCILLOR IRIZVI
Chair

(Note: The meeting started at 1.30 pm and ended at 2.20pm)