

**Minutes of the meeting of Licensing sub-committee held at
Committee Room 1, The Shire Hall, St Peter's Square, Hereford,
HR1 2HX on Monday 13 November 2017 at 10.00 am**

Present: Councillors DW Greenow (Chairman), PGH Cutter and A Seldon

Officers: Emma Bowell and Fred Spriggs

80. APOLOGIES FOR ABSENCE

No apologies for absence were received.

81. NAMED SUBSTITUTES (IF ANY)

There were no substitutes present at the meeting.

82. DECLARATIONS OF INTEREST

There were no declarations of interest made.

**83. TO CONSIDER AN APPLICATION FOR A NEW PREMISES LICENCE IN RESPECT
OF 'MORRISONS DAILY FILLING STATION, BARONS CROSS ROAD,
LEOMINSTER, HR6 8RN' - LICENSING ACT 2003**

Members of the licensing subcommittee of the council's planning and regulatory committee considered the above application, full details of which appeared before the Members in their agenda and the background papers.

Prior to making their decision the members heard from Emma Bowell, licensing technical officer and Fred Spriggs, Licensing Officer. Members also heard from premises licence holder's solicitor, Claire Johnson and premises licence holder's licensing and compliance manager, Kelly Nichols.

The committee heard from Mr Spriggs representing the licensing authority as a responsible authority that the issue with the application was that the current premises were a filling station and that under S176 of the Licensing Act 2003 it is an excluded premises as its primary use is as a filling station. Historically, the premises have only been open between 0700 hrs to 2200 hrs and during this period the premises did not hold a licence due to its primary use being a filling station. The information which had been received from the premises licence holder's solicitor is that the premises will be turned into a convenience store and filling station, with the primary use being a convenience store. The premises licence holder solicitor had not supplied any data to support this application and could have provided data from other similar shops in the chain. When Mr Spriggs had spoken to the premises licence holder's solicitor, they did not know what control measures would be in place to ensure that the premises' primary use would be a convenience store rather than a filling station.

The committee then heard from Ms Claire Johnson, premises licence holder's solicitor who explained that Morrisons owned in excess of 300 convenience stores, of which 180 were licensed. The chain were currently in the process of rolling out further convenience stores which were usually licensed as from their experience this was what

the customers wanted. Ms Johnson pointed that the BP and Applegreen premises near Leominster were also licensed to sell alcohol and were also filling stations.

Ms Johnson stated that the name Morrisons Daily related to the trading name of Morrisons for their convenience stores and in this instance was not relevant to the application. In addition Morrisons owned in excess of 500 stores which were all licensed and to her knowledge none of the premises had been subject to a premises licence review in the last eight years which was a testimony to how seriously Morrisons took the licensing objectives. Morrisons do operate a comprehensive training programme for all employees; operated to a challenge 25 policy and there were till prompts for employees.

Ms Johnson informed the committee that all spirits and high value alcohol would be behind the counter. There would a single refrigerated unit and a single unrefrigerated unit which would be stocked with alcohol. The only objection outstanding was the licensing authority's as conditions had been agreed with the police and none of the other responsible authorities had objected.

With regard to the issue raised in connection with S176 of the Act, Ms Johnson stated that the committee should ignore what was currently on the ground as it was Morrisons intention to re-build and increase the square footage of the premises to 1,217 sq. ft. which would triple the current size of the kiosk. The new store will be a proper convenience store with hot food to go; coffee; cash machine; lottery and convenience goods etc. and there would only be 2.5 bays allocated to garage. Ms Johnson explained that it was not Morrisons' policy to lodge evidence of primary use and there was nothing in the Licensing Act which provided for this. In the 180 applications submitted, Herefordshire was the only licensing authority which required this. A pie chart had been submitted which showed the expected use of the premises and was in line with the Murco case which established that use should be measured by intensity of use by customers. The pie chart indicated that 42.2% of expected sales will relate to convenience, this was based on actual sales at similar premises of comparable size owned by Morrisons. They gave the figures for Wetherby (53.5%), Totnes (53.2%) and Cromer (51.8%). Morrisons' experience was that once there was a convenience offering, the primary used was moved to convenience and it was speculation on the part of the licensing authority that the primary use would remain a filling station. Kelly Nichols, premises licence holder's licensing and compliance manager, confirmed that there were measures in place to monitor that the primary use of premises was convenience and appropriate steps would be taken if it was not.

Following queries from committee members, it was confirmed by Ms Johnson:

- That the premises would not sell alcohol until the re-fit of the premises had taken place. The re-fit was due to start on Monday 20 November.
- The data supplied by Morrisons was calculated by looking at the location, premises of a similar size and selling similar goods. All the comparator premises would have a 24hr premises licence.
- That she was aware that Herefordshire only had two other premises licensed to sell alcohol for 24hr. Unfortunately as the details were not available on the website, she had had to request further details of their licences under the Freedom of Information legislation.
- RonTech were completely separate to Morrisons but did sell Morrisons branded goods. These premises would have their own licences.
- That the primary use was based on three categories; whether people purchased only fuel; only convenience goods or both. The Murco case had established that it was the intensity of use that set the primary use of a premises in these circumstances.
- Car parking spaces would be available for those customers who were only using the premises for convenience goods.

- The premises were a long way from other residences and there were was no business access.

The committee carefully considered all the representations made, the statutory framework as well as having regard to the statutory guidance and Herefordshire licensing policy.

DECISION AND REASONS

Having carefully considered those matters brought before them and in reaching their decision, the members had full regard to both the provisions of the Licensing Act 2003, the guidance issued under section 182, the council's licensing policy and the representations (including supporting information) presented by all parties.

The decision of the committee was that the application should be granted in the terms sought, subject to the additional conditions agreed with the police, the mandatory conditions and such other appropriate conditions that are consistent with the operating schedule.

The licensing sub-committee having had its discretion engaged by a relevant representation from the licensing authority (in its capacity as a responsible authority) duly considered the provisions of both Section 176 of the Act and para 5.23 of the statutory guidance. They were satisfied that the primary use of the premises would in fact be a convenience store having heard the comparative evidence relating to similar size stores and the details of the proposals for the premises and therefore considered that it was appropriate to grant a premises licence.

The meeting ended at 10.55 am