

<b>Meeting:</b>	<b>Licensing sub-committee</b>
<b>Meeting date:</b>	<b>13 November 2017</b>
<b>Title of report:</b>	<b>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</b>
<b>Report by:</b>	<b>Licensing technical officer</b>

## **Classification**

Open

## **Key Decision**

This is not an executive decision.

## **Wards Affected**

Leominster South

## **Purpose**

To consider an application for a new premises licence in of 'Morrisons daily filling station, Barons Cross Road, Leominster, HR6 8RN'.

## **Recommendation**

**THAT:**

**The sub-committee determine the application with a view to promoting the licensing objectives in the overall interests of the local community. They should give appropriate weight to:**

- **The steps that are appropriate to promote the licensing objectives,**
- **The representations (including supporting information) presented by all parties,**
- **The guidance issued to local authorities under Section 182 of the Licensing Act 2003, and**
- **The Herefordshire Council statement of licensing policy 2015 - 2020.**

## **Options**

1. There are a number of options open to the sub committee:
  - a) Grant the licence subject to conditions that are consistent with the operating schedule accompanying the application and the mandatory conditions set out in the Licensing Act 2003,

- b) Grant the licence subject to modified conditions to that of the operating schedule where the sub committee considers it appropriate for the promotion of the licensing objectives and add mandatory conditions set out in the Licensing Act 2003,
- c) To exclude from the scope of the licence any of the licensable activities to which the application relates
- d) To refuse to specify a person in the licence as the premise supervisor, or
- e) To reject the application.

## Reasons for Recommendations

- 2. Ensures compliance with the Licensing Act 2003.

## Key Considerations

### Licence Application

- 3. The application (appendix 1) for a new premises licence has received representation and is brought before the sub committee for determination.
- 4. The details of the application are:

Applicant	Wm Morrison Supermarkets PLC Hillmore House, Gain Lane, Bradford, BD3 7DL	
Solicitor	Gosschalks	
Type of application: New	Date received: 22 September 2017	28 Days consultation ended 19 October 2017

### Summary of Application

- 5. The application requests a new premises licence to allow the following licensable activities, during the hours shown as follows:

Late Night refreshment  
All days                      23:00 – 05:00

Sale of Alcohol (Off Premises)  
All days                      0001- 0000

### Summary of Representations

- 6. Two (2) representations have been received from the responsible authorities (local authority and the police).

7. The police objected (appendix 2) to the licence but have now agreed a set of conditions.
8. The local authority has objected (appendix 3) to the licence.

## **Community Impact**

9. Any decision is unlikely to have any impact on the local community.

## **Equality duty**

10. There are no equality issues in relation to the content of this report.
11. This report has human rights implications for both the premises licence holder and the residents from the local neighbourhood. Any of the steps outlined in section 1 of this report may have financial implications for a licensee's business and livelihood and/or may have impact upon the day to day lives of residents living in close proximity to the premises.
12. Article 8(i) of the European Convention of Human Rights provides that everyone has the right to respect for his/her private and family life and his/her home (which includes business premises). This right may be interfered with by the council on a number of grounds including the protection of rights and freedoms of others. The First Protocol – Article 1 – also provides that every person is entitled to the peaceful enjoyment of his possessions and shall not be deprived of his possessions except in the public interest and conditions provided for by law. Members must accordingly make a decision which is proportionate to the hearing and endeavour to find a balance between the rights of the applicant, residents and the community as a whole.

## **Financial implications**

13. There are unlikely to be any financial implications for the authority at this time.

## **Legal Implications**

14. The licensing authority must have regard to the promotion of the four licensing objectives namely; the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm in exercising its functions under the Licensing Act 2003. Further regard should be had to the statutory guidance under Section 182 of the Act and the council's own statement of licensing policy. The options available to the licensing authority are set out in section 1 of this report.
15. This application is for a premises licence for a petrol filling station. Therefore the provisions of Section 176 of the Act are relevant to this application. Section 176 (1) provides that "No premises licence ... has effect to authorise the sale by retail or supply of alcohol on or from excluded premises". "Excluded premises" includes premises used primarily as a garage or which form part of the premises which are primarily so used. Premises are used as a garage where they are used for (i) the retailing of petrol (ii) the retailing of derv,iii) the sale of motor vehicles and iv) the maintenance of motor vehicles. This means that where a licence is granted for a garage and the primary use as a garage then the premises licence will be null and void in so far as it relates to retail sale or supply of alcohol and the licensing authority can enforce against those premises. There is no requirement under Section 17 of the Act to provide information about "primary use" when the application is submitted.

16. Given the effect of Section 176 of the Act there are limited circumstances in which the licensing authority can require information about the “primary use” at proposed premises or consider it at the application stage. The issue of “primary use” only becomes an issue for the licensing authority where relevant representations have been made that raise the issue of sale of alcohol from a garage and thus engage the crime and disorder objective. In those circumstances the licensing sub-committee can under regulation 17 of the Hearings Regulations request additional information as it considers appropriate. (*R (on the application of) Murco Petroleum Limited v Bristol City Council* [2010] EWHC 1992 (Admin)). This is supported by the statutory guidance under Section 182 which provides at para 5.23 “ ... *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 may ask the licence holder to provide further information to help establish what the primary use of the premises is.*”
17. In the event that that the licensing sub committee does not receive the additional information that it requires to determine the issue of primary use it has the power to adjourn the hearing to a further specified date to enable that information to be provided
18. The committee should be aware of a number of stated cases which have appeared before the Administrative Court and are binding on the licensing authority.
19. The case of *Daniel Thwaites Plc v Wirral Borough Magistrates' Court* (Case No: CO/5533/2006) at the High Court of Justice Queen's Bench Division Administrative Court on 6 May 2008, [2008] EWHC 838 (Admin), 2008 WL 1968943, Before the Honourable Mrs Justice Black.
20. In this case it was summed up that: -

A licensing authority must have regard to guidance issued by the Secretary of State under section 182. Licensing authorities may depart from it if they have reason to do so but will need to give full reasons for their actions.
21. Furthermore the Thwaites case established that only conditions should be attached to a licence with a view to promoting the licensing objectives and that ‘real evidence’ must be presented to support the reason for imposing these conditions.
22. This judgement is further supported in the case of *The Queen on the Application of Bristol Council v Bristol Magistrates' Court*, CO/6920/2008 High Court of Justice Queen's Bench Division The Administrative Court, 24 February 2009, [2009] EWHC 625 (Admin) 2009 WL 648859 in which it was said:

‘Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for licensing objectives’.
23. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

## Right of Appeal

24. Schedule 5 gives a right of appeal which states:

*Decision to grant premises licence or impose conditions etc.*

- 2 (1) This paragraph applies where a licensing authority grants a premises licence under section 18.

- (2) The holder of the licence may appeal against any decision—
  - (a) to impose conditions on the licence under subsection (2)(a) or (3)(b) of that section, or
  - (b) to take any step mentioned in subsection (4)(b) or (c) of that section (exclusion of licensable activity or refusal to specify person as premises supervisor).
  
- (3) Where a person who made relevant representations in relation to the application desires to contend—
  - (a) that the licence ought not to have been granted, or
  - (b) that, on granting the licence, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) or (c) of that section,

he may appeal against the decision.

- (4) In sub-paragraph (3) “relevant representations” has the meaning given in section 18(6).

25. Appeals should be made to the Magistrates Court and must be made within 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against

## **Risk Management**

26. There is little risk associated with the decision at this time as the legislation allows a right of appeal to the Magistrates Court within a period of 21 days of being notified of the decision in writing.

## **Consultees**

27. All responsible authorities and members of the public living within Herefordshire.

## **Appendices**

- Appendix 1 Application form
- Appendix 2 Police representation
- Appendix 3 Local authority representation

## **Background Papers**

None