

**Supplement to the agenda for**

# **Licensing sub-committee**

**Monday 21 January 2019**

**10.00 am**

**Committee Room 1 The Shire Hall, St Peter's Square, Hereford,  
HR1 2HX**

	<b>Pages</b>
<b>4. APPLICATION FOR A NEW PREMISES LICENCE IN RESPECT OF 'FORGE FILLING STATION, WORMBRIDGE, HEREFORD. HR2 9DH' - LICENSING ACT 2003</b>	<b>3 - 34</b>



Forge Filling Station  
Wormbridge  
Herefordshire  
HR2 9DH

Providing Evidence

In the enclosed we intend to prove that the forge filling station is primarily used as a grocery store with customer volumes and does comply to the alcohol licencing department for us to obtain an Alcohol Premise Licence for an Off Licence.

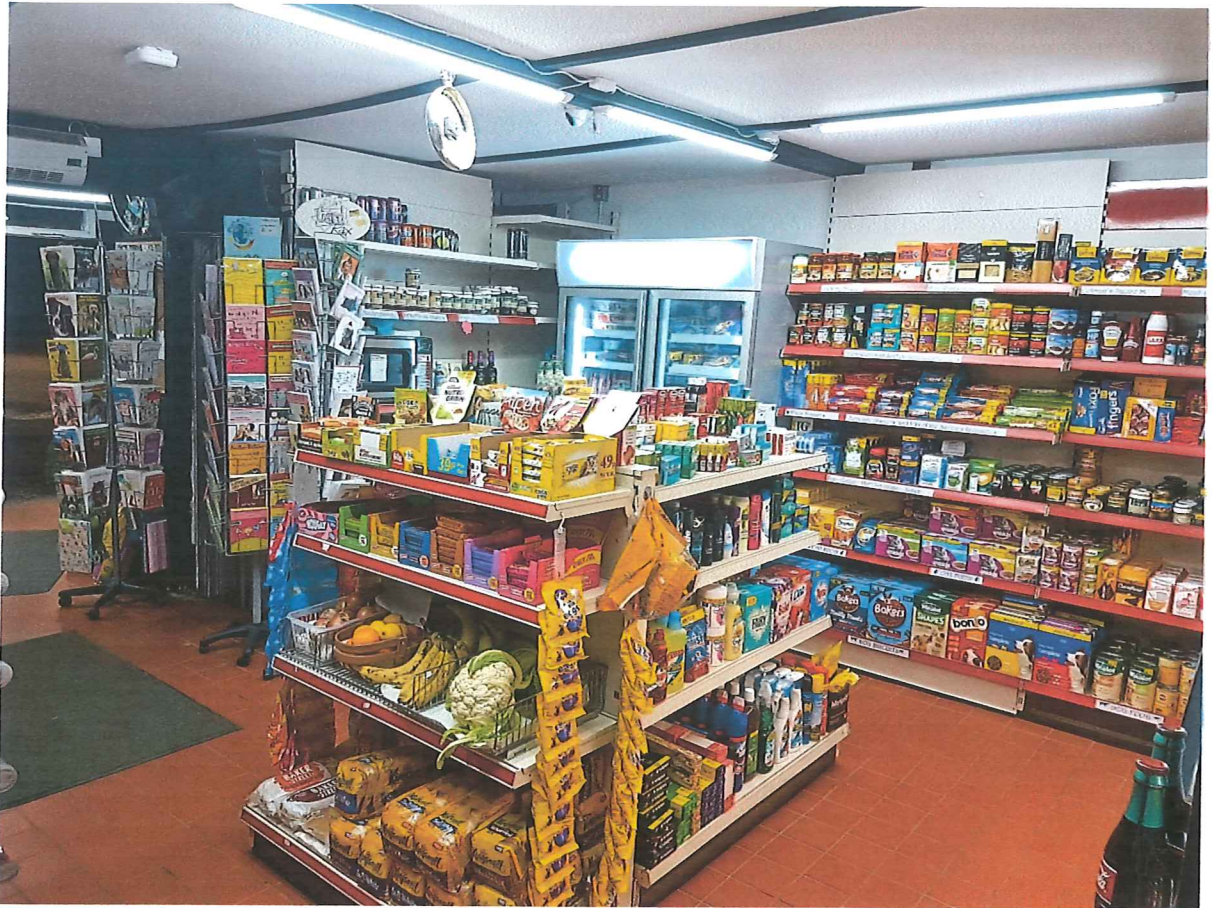
We would also like you to be aware that after 5.30 pm we are the only shop open within 4 miles of either direction of our premises that are open to serve the rural community until the other business open in the morning.

Enclosed are:

- Photographs of premises
- Licencing laws regarding alcohol sales at rural stores supplying fuel
- Proof of unit sales of Groceries Vs Fuel
- Previous/existing and proposed grocery sales growth
- Basic lists of groceries sold
- Local residential support in favour of us gaining this licence
- Adjoining businesses and outbuildings













## Licencing Law

This 1984 law was originally intended to prevent petrol stations that have their main sales through petrol and attached businesses to them such as garage repairs, car sales it was not intended to be against rural stores, this we can prove from both council licencing laws and high court rulings.

Item 1:

If it was the intention that petrol garages with grocery stores are not able to sell alcohol why may I ask are their probably a countless amount of garages throughout the country able to supply alcohol, one typical example a petrol station only 4 miles away from us that sell over 4 million litres of fuel yearly are able to provide this service in which we are trying to gain.

Item 2:

It clearly states in the attached copy of the England and Wales High court Decisions paragraph 21 section 5.24 the approach by the council, "if a garage shop in a rural area is used more intensively by customers purchasing other products than by customers purchasing product or services for the retailing petrol the retailing of derv, the sale of motor vehicles, the maintenance of motor vehicles".

We have provided you with clear till receipts which prove the items of sales of shop items are 5x greater than the items of fuel sales.

Item 3:

As stated in the association of convenience stores appendix 1 highlighted paragraph

"if customers use a forecourt store for purchasing products other than petrol more than they do for purchasing petrol then the premises is not primarily a garage. This is based around a proportion of transaction for petrol as opposed to transactions that don't involve petrol".

Item 4:

High Court Cases, here are two high court cases that ruled in favour of the garages due to the volume of sales on Groceries Vs Fuel. The cases are 'Green Vs Justices, 13<sup>th</sup> June 1994' and the second case is 'R Vs Liverpool Crown Court 17<sup>th</sup> December 1998'. Again, about the intensity of use by customer at these premises.

Please see attached a copy of these laws and highlighted sections which are stated above.

## Licensing Law

It is 1994 law was originally intended to prevent petrol stations that have their main sales through petrol and other fuel businesses to those such as garage repair, car sales & was not intended to be applied retail motor, this we can prove from both cases licensing law and right about mileage.

Item 1

It was the intention that petrol garages with goods that are not able to sell petrol why are I ask are they probably a certain amount of petrol throughout the country site to supply petrol, one typical example a petrol station only 4 miles away from us that sell over 4 million litres of fuel yearly and able to provide this service in which we are trying to gain.

Item 2

It clearly states in the attached copy of the Fairness and Access High Court Decision paragraph 13 that on 23rd the approach by the Council, "A garage that is a retail site would more frequently by customers purchasing other products than by customers purchasing petrol or services for the retailing petrol the volume of duty, the sale of motor vehicles, the maintenance of motor vehicles."

We have provided you with clear 03 receipts which prove the 11 years of price there are 22 greater than the limit of fuel sales.

Item 3

As stated in the attached of compliance notes appear, I highlighted paragraph "If customers use a forecourt, then the purchasing petrol is not retail motor, this they do for purchasing petrol then the premises is not primarily a garage, this is based around a proportion of protection for petrol as opposed to transactions that don't involve petrol"

Item 4

High Court Case here are two high court cases that cited in favour of the garage but to the volume of sales on grounds of fuel. The cases are Green vs Minister, 13th June 1994 and the second case is R vs Liverpool Council Case 13th December 1994. Again since the intensity of use by customers of these premises.

Please see attached a copy of these laws and highlighted sections which are stated above.





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# England and Wales High Court (Administrative Court) Decisions

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**You are here:** [BAILII](#) >> [Databases](#) >> [England and Wales High Court \(Administrative Court\) Decisions](#) >> Murco Petroleum Ltd, R (on the application of) v Bristol City Council [2010] EWHC 1992 (Admin) (30 July 2010)  
URL: <http://www.bailii.org/ew/cases/EWHC/Admin/2010/1992.html>  
Cite as: 174 JP 425, [2010] EWHC 1992 (Admin), (2010) 174 JP 425

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Neutral Citation Number: [2010] EWHC 1992 (Admin)

Case No: CO/14774/2009

**IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL  
30/07/2010

Before:

**MR JUSTICE CRANSTON**

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Between:

**R (on the application of) Murco Petroleum Limited**      **Claimant**  
- and -  
**Bristol City Council**      **Defendant**

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**Mr Roy Light (instructed by Hook and Partners ) for the Claimant**  
**Philip Kolvin QC (instructed by Bristol City Council Legal Services) for the Defendant**  
**Hearing date: 24 June 2010**

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**HTML VERSION OF JUDGMENT**

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**Mr Justice Cranston:**

## Introduction

1. In this judicial review the claimant seeks permission to challenge the decision of the licensing (hearings) sub-committee of Bristol City Council ("the Council"). That decision was to decline to entertain its application for a premises licence under the Licensing Act 2003 ("the 2003 Act") for

premises known as Costcutter, Henleaze Service Station, Bristol so that it could sell alcohol. The claimant owns Henleaze Service Station. It operates a network of such petrol stations throughout the United Kingdom, most with convenience shops attached. Its experience is that the combination of petrol station with a supermarket or shop enhances the profitability of forecourt operations.

### Background

2. In January 2009 the claimant made an application for a premises licence to allow off-sales of alcohol from 6am to 11pm on each day of the week. The application form was in the standard format. In part "P" of the form the claimant set out the various measures it intended to take to promote the four licensing objectives such as an alarm system, CCTV, alcohol training for staff, and demanding proof of age by young people. Attached to the application was a pie chart for the period 1-15 December 2008, which showed that 16.8 percent of customers used the premises for fuel only, 16.9 percent for shop only and 66.3 percent for mixed shop and fuel.
3. Notices were given of the application pursuant to the statutory requirements. A number of representations were made. These included two representations from local residents, who referred to alcohol sales at a petrol station. The Gollop family, which live about a third of a mile away, wrote that "this is a petrol station and not a supermarket and should not be granted a licence to sell alcohol". There was reference to another petrol station with a shop in the vicinity, where the licensing committee had given the applicant time to prove that it was a supermarket rather than a petrol station. That, said the Gallop family, should be done here. Mr and Mrs Malyckyj wrote:

"We feel that the granting of such a licence would encourage binge drinking, which is something the Government is trying to discourage and will contravene the rule "Don't drink and drive!" We therefore feel that the granting of such a licence is totally inappropriate on garage premises frequented by motorists and is not conducive to a residential area".

4. On 12 March 2009, the matter was considered by the licensing (hearings) sub-committee ("the sub-committee"). In the course of the hearing the sub-committee inquired whether the premises were primarily used as a garage or formed part of premises which were primarily so used. The claimant argued that the sub-committee had no need to consider the primary use of the premises. The sub-committee rejected that and considered it had insufficient material to consider the issue properly. It decided to defer the matter. It issued a notice of adjournment until 28 May 2009. That stated that the sub-committee was dissatisfied with the information so far provided, and what further information it needed. In particular, the sub-committee sought

"... more cogent evidence of transactions broken down identifying numbers of transactions made by:-

- o customers making fuel transactions only
- o customers making fuel and convenience store transactions only
- o customers making convenience store transactions only
- o customers using the car wash facilities
- o customers using the air and water facilities ...

... over a much longer period than two weeks – preferably over a six-month period to enable them to more accurately consider the matter."

5. On 22 April 2009 the claimant wrote to demand that the application be determined. It included an advice by Mr Roy Light stating that no further evidence would be produced: the Council did not have power to consider primary use; and in any event, the evidence already provided was adequate. On 12 May 2009, the Council wrote to the claimant reiterating its request for further information, and pointing out that if the facts were as suggested in the pie chart it was in the claimant's interests to



provide the evidence. The claimant wrote again on 15 May 2009 to state that it was not willing to provide the information.

6. The claimant's letter was placed before the sub-committee. It accepted that it could not require information relating to car maintenance. It was not attempting to impose onerous obligations on the claimant and wanted a resolution of the impasse. What it desired were details of till receipts or transactions for a specified 75 minute window for each day in the period of 1-15 December 2008, the dates of the original pie chart. The claimant declined to supply further information and in its letter of 22 May 2009 suggested that the Council proceed to a determination based on the pie chart which had been produced. There was a site visit on 28 May, immediately prior to the hearing that day. At the hearing the claimant requested that the sub-committee perform its statutory duty to determine the application. Because of the claimant's refusal to provide the information requested the sub-committee to adjourn the hearing further. The Council sent a notice of adjournment. The adjournment was until the first available date following receipt of the information requested. The notice stated:

"The Committee deliberated at length but were not satisfied that the evidence produced by the appellant was sufficient to enable them to assess, on the balance of probabilities, whether the premises are excluded premises within the meaning of the Act. Further, the Committee consider that the letter dated 20 May 2009 represented a reasonable compromise to enable them to make a decision. The Committee were very disappointed that the applicants were not willing to provide the documentary evidence used to support the pie chart.

If the applicants are unable to provide the documentary evidence requested in the letter of 20 May 2009 for the period stipulated in that letter, then they should provide the equivalent information over an alternative period of two consecutive weeks".

7. On 18 June 2009 the claimant emailed the Council to state that it was not prepared to provide the information sought on 20 May 2009. Instead, it provided the same kind of pie chart information as it had originally, but for the period 1-19 April 2009. It also stated the number of times a cash point machine had been used on the premises. It explained that it could not provide itemised information since this was overwritten on a rolling monthly basis. On 31 July 2009, the Council wrote that the matter would be re-listed on 17 August 2009. It stated that the claimant need not confine its evidence to the dates requested but could select any two-week period. The Council also asked the claimant's managing director to attend the hearing to present the information requested and to answer any questions members might have.
8. At the 17 August meeting the claimant was represented by its counsel and a licensing consultant, who stated that no further information would be provided. Counsel submitted that the sub-committee had no right to determine the issue of the primary use of the premises. The sub-committee determined that it did have the power to make such a determination, for the reasons set out in its record of decision. In making its determination it took into account the Secretary of State's guidance set out in paragraph 9, which it considered to be a correct statement of the law.

"The licensing sub-committee does not accept that the applicants are unable to provide the information requested. The licensing sub-committee have been very flexible in terms of the information it has requested and the applicants have resisted each request ...

The members were unanimous that they were unable to determine what the primary use of the premises was due to the lack of transactional information covering the shop and fuel use. Therefore, the application could not be determined either way. The members did not consider that in these circumstances they could grant or reject the application as their decision could not in their opinion be an informed decision without the information that they had requested on a number of occasions.

The members were also concerned as to why the applicants were so resistant to the supply of straightforward trading information, and believe that the probable answer is simply that the supply of information would not assist the applicant's case, and indeed might lead to an immediate prosecution were a licence to be granted. However, in the members'



experience, it is far better for applicants to take a frank, co-operative approach to enable the authority to take an informed decision based on material co-operatively given rather than, as happened here, for an applicant to take a plainly selective approach based on partial information so as to persuade the licensing authority to grant the licence. The applicants' approach to this matter is inimical to the partnership approach which underpins the new licensing legislation, and members wish to record their disappointment at the outwardly uncooperative stance taken by applicants here".

9. Since the matter seemed to the claimant to have been brought to a conclusion, rather than adjourned, the claimant lodged an appeal on 17 September 2009. The Council maintained that no decision had been made in respect of the application and accordingly no right of appeal to the Magistrates' Court arose. In early November the Magistrates' Court declined to accept jurisdiction. It wrote: "The Act does not allow a Magistrates' Court to review whether the decision made by the relevant licensing authority is one which the Act permits to make". That approach was reiterated by the Magistrates' Court in late November.
10. The claimant sent a letter before action in November 2009 and this judicial review was filed on 12 December 2009. It was considered on the papers in March this year by Ian Dove QC, a deputy high court judge, who decided that the case merited an oral hearing in relation to permission to apply for judicial review. Given the pressure on the lists in the Administrative Court, and with the agreement of the parties, I treated that hearing as a rolled-up hearing to consider both permission to apply for judicial review and the substantive issue itself.

#### The legal framework

11. The 2003 Act rationalised the licensing regime to introduce a single scheme for licensing premises which sell alcohol or provide regulated entertainment or late night refreshment. For present purposes a key change was that it transferred primary responsibility for licensing from the justices to local authorities, with magistrates' courts now exercising a purely appellate jurisdiction. Licensable activities are set out in section 1 of the Act and include the sale by retail of alcohol: s. 1(1)(a). Section 3 constitutes councils as licensing authorities and section 6 obliges each licensing authority to establish a licensing committee of at least 10 members. The licensing committee may arrange for the discharge of its functions of determining an application for a premises licence by a sub-committee: ss. 10(4)(a); 10(4)(a)(i). Appeals against the decisions of licensing authorities are to the magistrates' court on questions of both law and fact: s. 181; Schedule 5. Section 4 of the Act provides that a licensing authority must carry out its licensing functions with a view to promoting the licensing objectives. These are listed in section 4(2) as (a) the prevention of crime and disorder; (b) public safety; (c) the prevention of public nuisance; and (d) the protection of children from harm.
12. A premises licence is a licence authorising the use of premises for one or more licensable activities: s. 11. Applications for a premises licence are governed by section 17 of the Act:

"(1) An application for a premises licence must be made to the relevant licensing authority.

(2) Subsection (1) is subject to regulations under –

(a) section 54 (form etc of applications etc)"

The relevant regulations are the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005, SI 2005/42 as amended. An application has to be accompanied by an operating schedule which as the name suggests sets out what is proposed to be done under the licence: s. 17(3)(4). Sub-section (5) provides that the Secretary of State must by regulations require an applicant to advertise the application so as to bring it to the attention of interested parties and to give notice to each responsible authority (e.g. the police; the environmental health department): s.17(5)(a)-(b). The regulations may prescribe the period during which interested parties and responsible authorities may make representations: s. 17(5)(c). Interested parties includes those living in the vicinity of the premises, that concept concerning a physical and geographical relationship: s. 13(3)(a); R(4



Wins Leisure Ltd) v Licensing Committee of Blackpool Council [2007] EWHC 2213 (Admin), [15]-[20].

13. Section 18 deals with the determination of an application for a premises licence. It reads, in part:

"18 Determination of application for premises licence

(1) This section applies where the relevant licensing authority—

(a) receives an application for a premises licence made in accordance with section 17, and

(b) is satisfied that the applicant has complied with any requirement imposed on him under subsection (5) of that section.

(2) Subject to subsection (3), the authority must grant the licence in accordance with the application subject only to—

(a) such conditions as are consistent with the operating schedule accompanying the application, and

(b) any conditions which must under section 19, 20 or 21 be included in the licence.

(3) Where relevant representations are made, the authority must—

(a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and

(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

(4) The steps are—

(a) to grant the licence subject to—

(i) the conditions mentioned in subsection (2)(a) modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and

(ii) any condition which must under section 19, 20 or 21 be included in the licence;

(b) to exclude from the scope of the licence any of the licensable activities to which the application relates;

(c) to refuse to specify a person in the licence as the premises supervisor;

(d) to reject the application".

Relevant representations are dealt with in section 18(6)-(9). In British Beer and Pub Association v Canterbury City Council [2005] EWHC 1318 (Admin); (2005) 169 JP 521; [2006] BLGR 596, Richards J said that the effect of the provisions governing the making and determining of applications is that if there are no representations from responsible authorities or interested parties, the licensing authority must grant the licence in accordance with the application, subject only to conditions. Where relevant representations are made, there must generally be a hearing and a discretionary decision must be made by the licensing authority: [14].

14. As with earlier legislation the policy of the 2003 Act is that alcohol should not be sold at service areas, garages and the like. It seems that when originally adopted the policy was directed at removing the temptation to drink and drive, although now this would be expressed as engaging the crime and disorder licensing objective. Section 176 of the Act reads, in part, as follows:

"Prohibition of alcohol sales at service areas, garages etc

(1) No premises licence, club premises certificate or temporary event notice has effect to authorise the sale by retail or supply of alcohol on or from excluded premises.

(2) In this section "excluded premises" means

...

(b) premises used primarily as a garage or which form part of premises which are primarily so used.

...

(4) For the purposes of this section –

...

(c) premises are used as a garage if they are used for one or more of the following –

(i) the retailing of petrol,

(ii) the retailing of derv,

(iii) the sale of motor vehicles,

(iv) the maintenance of motor vehicles".

The predecessor provision, section 9 (4A) of the Licensing Act 1964 as amended, provided for the exclusion of garage premises from receiving a licence depending on primary use.

"(4A) Premises shall be disqualified for receiving a justices' licence if they are primarily used as a garage or form part of premises which are primarily to be used".

The editors of Paterson's Licensing Acts 2010 describe section 176 of the 2003 Act as a "better arrangement" over section 9 (4A) in situations where premises "qualified" for sale of alcohol at the time of the original licence application, but subsequently ceased to qualify because, for example, fuel sales increased. Under section 9(4A) such a development meant that the licence could only be removed upon renewal, or by revocation. Under section 176 the licence would simply cease to provide a valid authority for sales (p. 519).

15. The concept of premises being primarily used as a garage under section 176 of the 2003 Act (and section 9 (4A) of the 1964 Act) has been considered by the courts on at least two occasions. The first was in Green v Justices for Inner London Area CO/487/93, unreported, 13 June 1994, a decision of the Divisional Court. There the justices had concluded that the primary use of the garage/shop premises was as a garage. The evidence from the applicant was that during the sample dates there were twice as many customers using the shop as compared with the petrol and petrol and shop customers. As the case came to an end the justices asked for figures about turnover and on that basis they reached their decision. The Divisional Court held that they had applied the wrong test because they had compared the gross figure for petrol sales and compared it with the figure net of VAT in connection with the shop. However, it is clear from the judgment of MacPherson J (with whom Butler-Sloss LJ agreed) that there was nothing improper in the magistrates examining turnover figures to determine primary use.



16. In R v Liverpool Crown Court ex p Goodwin CO/2639/97, 17 December 1998, the justices rejected the application for an off-licence because they held that the primary use of the premises was as a garage. The matter went to the Crown Court, which dismissed the appeal. The Crown Court said that the issue was how the premises were used: it "is a garage, it is known as a garage and having viewed the photographs we take the view that it is a garage". Laws J referred to Green and then said:

"In the present case the fact is that quite apart from anything else that may be said, the Crown Court have regarded the appearance of the premises and how it is known in the locality as material to the question of primary use. That seems to me to be an erroneous approach. The question must be, what is the intensity of use by customers at the premises? So that evidence such as that of customer lists, to take an example, might be highly material".

Thus Laws J quashed the Crown Court decision on the basis of irrelevant considerations.

17. Mr Light, who appeared for the claimant, informed me that, as a result of Goodwin, evidence on primary use before licensing authorities typically takes the form of what could be described as numbers rather than turnover. In other words, the intensity of use is measured by the number of customers using the garage as opposed to the number using the garage and shop or the shop alone.

18. In my view it is a matter for each licensing authority to decide whether it will decide primary use on the basis of numbers or evidence of turnover. It will be recalled that in Green the justices had been presented with evidence of numbers but asked for evidence of turnover. The Divisional Court did not question that. There is nothing in Laws J's judgment to suggest that intensity of use – the phrase used – cannot be calculated by reference to the turnover figures.

19. The Licensing Act 2003 (Hearing) Regulations 2005, SI 2005 No. 44 ("the Hearing Regulations") governs the conduct of hearings by licensing authorities. A notice of hearing must be given and by regulation 7(1) must be accompanied by information regarding

"(d) any particular points on which the authority considers that it will want clarification at the hearing from a party."

20. There is a power to adjourn a hearing "to a specified date" where the authority considers this may be necessary for its consideration of any representations or notice made by a party: reg. 12(1)(a). Regulation 12(2) reads:

"Where an authority has adjourned a hearing to a specific date it must forthwith notify the parties of the date, time and place to which the hearing has been adjourned".

Members of the authority may ask any question of any party or other person appearing at the hearing: reg. 17. A licensing authority must make a decision within five working days from the day of the hearing: reg. 26(2).

21. Section 4(3)(b) 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 Current Guidance was issued by the Secretary of State for Culture, Media and Sport in March 2010 and laid before Parliament, although the passages cited below have remained unaltered from earlier versions. As the Guidance itself explains nothing in it should be taken as indicating that any requirement of licensing law or any other law may be overridden. That part of the Guidance relating to garages is as follows:

"Garages

5.23 Section 176 of the 2003 Act prohibits the sale or supply of alcohol from premises that 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:

- o the retailing of petrol



- o the retailing of derv,
- o the sale of motor vehicles
- o the maintenance of motor vehicles

5.24 The licensing authority must decide whether or not any premises is used primarily as a garage. The approach endorsed so far by the courts is based on intensity of use to establish primary use. For example, if a garage shop in any rural area is used more intensely by customers purchasing other products than by customers purchasing the products or services listed above, it may be eligible to seek authority to sell or supply alcohol.

5.25 Where there is insufficient evidence to establish primary use, it is for the licensing authority to decide whether to grant the licence and deal with any issues through enforcement action or to defer granting the licence until the primary use issue can be resolved to their satisfaction".

### The claimant's case

22. The claimant's case is premised on the Licensing Act 2003 being far more prescriptive than the previous legislation. Strict time limits apply at all stages of the procedure and the powers and duties of the licensing authority are strictly controlled. Gone is the unfettered discretion of the licensing justices, contained in the Licensing Act 1964. In its place are what Paterson's Licensing Act 2010 describes as the tramlines of section 18 from which no licensing authority may depart (p. 62).
23. In Mr Light's submission an applicant is required by s.17(2)(b) to complete a comprehensive application form to apply for the grant of a premises licence, which contains no reference to garage premises or primary use. Upon receipt of the application the licensing authority must consider whether it is a valid application, complying with section 17 of the Act. Here the council accepted the claimant's application as valid and did not raise the issue of primary use. In fact the claimant attached the pie chart about use to the application form. Only one valid representation from an interested party referred to garages and alcohol, but it did not explicitly raise the issue of primary use. The Council properly referred the matter to a hearing. The notice of hearing did not request any clarification on primary use under regulation 7(1)(d). It was the Councillor chairing the hearing on 12 March 2009, who raised the issue of primary use, along with a number of other matters which the Council subsequently accepted were irrelevant.
24. In the claimant's submission the duty of the Council under section 18 is clear. It must grant the licence or refuse the licence. There is no power to refuse to determine an application. If the Council was not satisfied by the evidence on primary use it should have refused to grant the licence. The claimant could then have appealed to the Magistrates' Court. Instead the Council has repeatedly refused to do that and now claims that for a number of reasons it can depart from the clear duties laid down in section 18. The sub-committee has purported to adjourn the hearing, when there is no power to do this. The suggestion in paragraph 5.25 of the Guidance, that a licensing authority can defer matters, is wrong, for it would have the effect that the licensing authority could defer an application indefinitely, thus not only denying an applicant a licence but also precluding the opportunity to advance its case by way of appeal to the magistrates' court. There is no legal basis for deferment referred to in the Guidance and none contained in the Act. It would be quite wrong to utilise the general powers conferred by section 111 of the Local Government Act 1972 as it would not facilitate the objectives of the 2003 Act. Instead, deferment would defeat the force of section 18 and effectively remove the right of appeal. Moreover, the adjournment was not to consider any representation or notice made by a party, nor was it to a specified date with the parties notified of the date, time and place to which it had been adjourned as required by regulation 12 of the Hearing Regulations. To allow repeated adjournments under regulation 12 would have the effect of defeating the wording of section 18 and effectively removing the right of appeal.
25. Mr Light submitted that regulation 17, enabling members of the authority to ask any question of any party or other person appearing at the hearing, does not give an implied right to an answer if that is not



forthcoming. A licensing authority cannot adjourn a matter indefinitely while it waits for an answer. The proper course for a licensing authority, faced with what it perceives as an uncooperative, unreasonable or dishonest applicant, is to refuse the application. There is then the possibility of an appeal to the magistrates' court. If the authority's decision is upheld it is protected in costs. To allow a licensing authority the power to ask for whatever information it wishes, and to fail to make a determination if that evidence is not forthcoming, or is considered insufficient, takes away the fundamental right of appeal against the decisions of licensing authorities.

### Discussion and conclusion

26. In this case the claimant made an application for a premises licence to enable it to sell alcohol from a shop attached to one of its petrol stations. The application triggered "relevant representations" under section 18(6) of the 2003 Act, including from at least one "interested party" as defined in section 13(3) (a). That was the letter from Mr and Mrs Malyckyj. The Gallop family also wrote, although the claimant contends that they are not an interested party because they do not live in the vicinity of the premises. There is no need for me to determine that issue, since it is accepted that the Malyckyjs qualify as interested parties.
27. There was then a hearing before the sub-committee. The claimant accepted that it was proper to hold that hearing pursuant to section 18(3)(a). Under sections 4 and 18(3)(b) the sub-committee was under a duty in deciding on the application to act in such a way as was necessary to promote the licensing objectives and in accordance with the overarching duty to carry out its licensing functions with that end in view. To put it in the terms of the legislation, the Malyckyj's letter engaged the crime and disorder and public safety licensing objectives. If the premises were primarily a garage and so were excluded premises under section 176, their use for the sale of alcohol would be unlawful, thus also engaging the crime prevention objective. The issue of the juxtaposition of petrol sales and alcohol was thus firmly before the licensing sub-committee. In my view it was bound to consider it given the Parliamentary policy on sales of alcohol at petrol stations. In reality the issue became the extent to which the sub-committee was entitled to pursue it.
28. The first issue is whether the sub-committee was entitled to ask the claimant for trading information. It will be recalled that the sub-committee was not satisfied with the information it had received, which amounted to the pie chart of use over a two week period some months earlier. In my view it had the legal power to ask for further information. At one point Mr Light seemed to suggest that the Malyckyjs' representation was insufficient to enable the sub-committee to ask a question concerning the use of the garage, and that nothing less than a specific reference by them to the terms of section 176 would have done. If so, I reject such a technical interpretation. It is far removed from the administrative system with democratic participation by local residents contemplated by the 2003 Act. The Malyckyjs' representation raised squarely the issue of sale of alcohol from garages. The licensing authority set out to ascertain whether this was excluded premises within the meaning of the legislation.
29. Moreover, the fact that clarification was not asked for on a particular point in the notices of hearing sent out under regulations 6 and 7 in no way limits the pursuit of the point at a hearing. Otherwise a resident who had made a perfectly sensible representation would be debarred from pursuing it, not by his or her own actions but by what a licensing authority had or had not requested of the other party by way of clarification. I reject any suggestion that if a point is not mentioned in a notice of hearing this prevents any party, or the sub-committee itself, from raising questions on material matters. Notices of hearing as pro forma documents cannot limit the ability of sub-committees to investigate issues so as to promote the licensing objectives through their decision-making.
30. Regulation 17 of the Hearings Regulations clearly permits the authority to ask any question of any party. Moreover, in my judgment section 111 of the Local Government Act 1972 confers an incidental or implied power on the sub-committee to ask a question of a party, where the question is calculated to elicit an answer which will facilitate the function of considering and adjudicating upon the relevant question, in this case responding to the Malychyj's representations so as to promote the licensing objectives: see Chief Constable of Nottinghamshire Police v Nottingham Magistrates Court [2009] EWHC 3182 (Admin), [35]. I note in passing that whereas Schedules 6 and 7 of the 2003 Act amend and repeal other sections of the Local Government Act 1972, they do not touch section 111.



31. Thus the question arises, about what information was the sub-committee able to inquire? I have already said that the authorities recognise that trading information is relevant to the issue of "excluded premises" under section 176 of the 2003 Act. In my view there can be no question but that the sub-committee could ask about that information. There is no need for me to draw the parameters to the information the sub-committee could ask about. Relevance and materiality are obviously central considerations. The sub-committee requested further information regarding the operation of the garage, such as car wash figures, but now concedes that it had no right to do that.
32. Once the claimant failed to respond to the question on turnover, the next issue is whether the sub-committee was entitled to adjourn the hearing for a satisfactory answer. In my view it could do so, since regulation 12 confers a specific power to adjourn where necessary for the consideration of a representation made by a party. It is not a limited power to adjourn, for example, because a person falls ill, as Mr Light at one point suggested. In my view the Guidance is correct when it advises that where there is insufficient information about primary use the authority may defer the matter until the question is resolved to their satisfaction. Here, the Malychj representation had specifically concerned the juxtaposition of alcohol and petrol sales. No answer was forthcoming and the sub-committee adjourned. However, an adjournment must be to a "specified date" under the Hearing Regulations. On 17 August the sub-committee, in effect, adjourned the matter generally. What in my judgment it should have done was to adjourn the matter to a later, specified date, albeit that it appeared a stalemate had been reached and the matter might have to be adjourned yet again.
33. Thus in my view the sub-committee was entitled to adopt the approach it did to the refusal by the claimant to answer the question about trading figures. The answer lay wholly within the claimant's own knowledge and was relevant and material to a consideration of the representation and the promotion of the licensing objectives. As a matter of law trading figures can be used to determine the issue of primary use under section 176: Green v Justices for Inner London. The sub-committee was entitled to adjourn the matter until the information, lawfully required, was provided.
34. Any other construction of the powers of a licensing authority would turn it into a cipher. It would be forced to make a decision on less information than necessary to promote the licensing objectives. A licensing authority must be able to pursue issues of public safety, the protection of children from harm and other objectives of the 2003 Act. The example proffered by Mr Kolvin QC, for the Council, is apposite:

"Imagine a rock festival. A temporary spectator stand is proposed. A question is raised whether it will be safe or a death trap. On the claimant's showing, the applicant can simply refuse to tell the authority anything about the means of construction, the expertise of the designer or the safety certification process, defying the authority to refuse the application and risk having to respond to an appeal, with all the unnecessary cost and time that that would entail".

The claimant's interpretation of the provisions of the 2003 Act and attendant regulations would make a mockery of the standing of the Council as the licensing authority and its function as the primary decision-maker. It would also be inimical to the aim of the legislation to promote the licensing objectives. Perhaps as important it would frustrate the role which local residents have in making representations under the 2003 Act and would downgrade the role of democratically elected decision-makers.

35. I dismiss the claim.



PART I - DELEGATED

8. LICENSING ACT 2003 - SUPPLY OF ALCOHOL FROM PETROL FILLING STATIONS (DHH)

1. Summary

1.1 This report advises when a local licensing authority may grant a premises licence to permit the supply of alcohol from a premises which appears to be an 'excluded premises' by virtue of being a garage or fuel filling station.

2. Details

2.1 Section 176 of the Licensing Act 2003 states: No premises licence, club premises certificate or temporary event notice has effect to authorise the sale by retail or supply of alcohol on or from excluded premises.

2.2 In this section "excluded premises" means; premises situated on land acquired or appropriated by a special road authority<sup>1</sup>, 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 premises used primarily as a garage or which form part of premises which are primarily so used.

2.3 The Act states that 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;
- the maintenance of motor vehicles.

2.4 At first glance the law seems very clear on this matter. However it is well known that many fuel filling/service stations have been selling alcohol from long before the Licensing Act 2003 came into force, under the amended Licensing Act 1964.

2.5 The situation arises from an appeal in 1994 *Green v Inner London Licensing Justices*. In a case decided under the Licensing Act 1964, s9(4A) upon hearing an application for a justices' licence in respect of a service station licensing justices had inadvertently compared gross turnover derived from the sale of fuel (including all taxes and duties) with the net turnover from sales of non-disqualifying products. The Divisional Court quashed the justices' finding that the premises were disqualified by reason of subsection 4A and remitted the case for a re-hearing. The Justices' licence was subsequently granted, and the Divisional Court decision became binding upon the lower courts.

2.6 This ruling was further tested in *R v Liverpool Crown Court, ex p Goodwin* in 1998 when Laws J held that the Crown Court had misdirected itself in finding that "the appearance of the premises and how it is known in the locality as material to the question of primary use. That seems to me to be an erroneous approach". The lower court had also had regard to "gross takings", contrary to the test which had been applied in *ex p Green*. Quashing the decision Laws J suggested that the issue for the purpose of the Licensing Act 1964, s9 (4A) must be "What is the intensity of use by customers at the premises?" Lists of customers, classified by usage, "might be highly material".

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<sup>1</sup> Special road authority refers to either the Minister for Transport or a local highway authority acting – the context relates to motorway service centres



- 2.7 The Licensing Act 2003 substantially reproduced the model for the exclusion of so-called "garage premises" that has existed since the 1964 Act was amended by the 1988 Act. However, historically premises were disqualified from receiving a justices' licence, whereas under the new legislation a Premises licence which has already been granted is stated simply to be *of no effect* where the relevant premises are, or become, "excluded". This is a much better arrangement which covers the situation where premises "qualified" for sale of alcohol at the time of the original licence application but subsequently ceased to qualify because, for example, fuel sales increased. Traditionally such a development meant that the licence could only be removed upon renewal or by revocation. Now, the licence would cease to provide a valid authority for sales.
- 2.8 In a prosecution under Section 136 of the Licensing Act 2003 (unauthorised licensable activity) it would be for the prosecution to establish that even though an ostensibly valid premises licence existed, the premises had become "excluded" by reason of the altered nature of the business. Whereas it was previously incumbent upon the licensing justices to undertake a detailed consideration of whether, on the evidence, garage premises were entitled to be granted or receive a justices' licence at the time of the application, it can be argued that under the new regime such an approach is less important since any such licence granted permitting the supply of alcohol will simply be null and void if the premises are or become, technically, excluded.
- 2.9 Although licensing practitioners consider this a better arrangement, there is now no compulsion upon the license holder to periodically convince the licensing authority (previously the justices every three years) that the licence is still of effect. In the future, before any prosecution might be contemplated, where it is suspected by the LLA or held by a representation that a garage/service station had technically become excluded for whatever reason, it would be prudent to first call for a review of the licence. Subject of course to sufficient evidence to justify the decision, the LLA could require the licence holder to assess the intensity of the use on a continual basis for a specified period, and to report the data to the LLA. Modern tills are capable of recording the value and volume of fuel sales versus non fuel sales and combined transactions.
- 2.10 Of course, such a review may be requested by a responsible authority but cannot be initiated by the LLA itself.
- 2.11 Guidance to the trade from the Association of Convenience Stores is given at Appendix 1.
3. **Options/Reasons for Recommendation.**
- 3.1 This report was initially requested for information only. However Committee may wish to include more detailed reference to how this LLA will interpret and address s176 in the consultation draft of the local licensing policy review. This would have the benefit of offering an explanation of the process to those who might wish to object to a new or varied licence application and to make it clear to applicants of the nature and detail of the evidence required to show that the premises is not already excluded under the Act.
- 3.2 Applications from garage/service station proprietors will normally be supported by a legal representative familiar with the case law that has provided guidance in the past. Such applications will no doubt be supported by a dossier of evidence, obtained by customer survey, which will attempt to convince the Licensing Sub-Committee that the net turnover from fuel sales is currently less than that from non-disqualifying products (groceries, tobacco etc).
- 3.3 For the one application that has been determined for a premises licence permitting supply of alcohol at a fuel station in Three Rivers, the dossier of evidence was presented to the Sub Committee on the night of the Hearing. This gives little time for a detailed examination of the facts. Officers recommend that



in future this evidence is included with the application and that the Licensing Officer be authorised to reject applications that are made without such evidence.

**4. Policy/Budget Implications**

4.1 The recommendations in this report are not currently within the Council's agreed local licensing policy.

**5. Financial Implications, Equal Opportunities, Staffing, Environmental, Website Implications**

5.1 None specific.

**6. Legal Implications**

6.1 If the approach in this report at 3 is adopted this will improve the quality and robustness of such decisions. It will also be helpful and fair to unrepresented applicants.

6.2 However Committee should be wary of being too prescriptive as to the nature and amount of supporting information it requires, as this might be said to fetter its discretion. Ultimately the evidence is a matter for an applicant and his advisers.

6.3 If no information is supplied to show, on a balance of probability, that the premises are not 'excluded', then the application should be refused.

**7. Community Safety Implications**

7.1 Applications for a review of a Premises licence at a service station are likely to be made by Trading Standards, concerning under age sales of alcohol, or the Police on the same grounds or from a prevention of crime and disorder perspective.

**8. Risk Management Implications**

7.1 There are no risks to the Council in agreeing the recommendations at this stage. Any risk identified by adopting the suggestion at 3.3 will be included in a future report detailing the full results of licensing policy consultation.

**9. Recommendations**

9.1 That the Committee notes the contents of this report.

9.2 That the 2007 consultation draft of the statement of local licensing policy be amended to include reference to; the criteria that will be used by the LLA in determining applications from petrol & DERV filling/service stations, and the information that will be needed at the application stage to assist the LLA in processing the matter.

**Background Papers**

Paterson's Licensing Acts 2007 Vol 1, ISBN 1-4057-1588-x, Lexis Nexis Butterworths

Report prepared by: John Scott, Commercial Standards Manager

**Appendices**

Appendix 1 – Guidance from the Association of Convenience Stores

# Association of Convenience Stores

## ACS Introduction

This is an independently commissioned legal briefing from Professor Roy Light, University of West of England for the Association of Convenience Stores and Lockett & Co. It sets out the current case law on Section 176 of the Licensing Act 2003, this is a re-enactment of provisions s.9 (4)(A) and (B) of the Licensing Act 1964. This paper explains the criteria against which the “premises used primarily as a garage” test has been addressed in case law.

The reason that many forecourt store operators have legally obtained alcohol licences is because they have satisfied the court that their sites are not primarily a garage based on:

**Turnover:** If a store is a bigger part of the business than the sale of fuel, then it is not primarily a garage. It is important though to acknowledge that these calculations are only done fairly if they are presented net of VAT and duty, which is disproportionately high on petrol.

**Customer Use:** If customers use a forecourt store for purchasing products other than petrol more than they do for purchasing petrol then the premises is not primarily a garage. This is based around the proportion of transactions for petrol as opposed to transactions that don't involve petrol or involve petrol and other goods. If as is the case for many convenience stores proportion of solely petrol transactions are not significantly larger than the proportion of non petrol or mixed transactions then the premises is not primarily a garage.

Any questions contact Shane Brennan, Public Affairs Executive, Association of Convenience Stores on 01252 515001 or email [shane.brennan@acs.org.uk](mailto:shane.brennan@acs.org.uk)



## **Licensing Act 2003 – premises primarily used as a ‘garage’**

### **Professor R. Light – University of West of England**

Section 176(1) Licensing Act 2003 provides that ‘No premises licence, club premises certificate or temporary event notice has effect to authorise the sale by retail or supply of alcohol on or from excluded premises’. One type of excluded premises is defined by s.176(2)(b) as ‘premises used primarily as a garage or which form part of premises primarily so used’. ‘Premises are used as a garage if they are used for one or more of the following purposes’ - the retailing of petrol or derv, the sale or maintenance of motor vehicles (s.176(2)(c)).

How will this section fall to be interpreted by local authority licensing committees? While at first sight it may appear an easy and unproblematic provision – ‘there are petrol pumps at those premises, therefore they are used as a garage, therefore they are disqualified’ – it is a specific and technical section requiring careful interpretation and application. And as such is far from simple.

Section 176(2)(b) and (c) of the 2003 Act intentionally, and effectively in the same words, re-enact the provisions contained in s.9(4)(A) and (B) of the Licensing Act 1964. Valuable guidance on interpreting and applying s.176 can therefore be found in the way in which the courts and licensing committees have approached s.9 of the 1964 Act. High Court and Crown Court decisions, together with decisions of licensing committees, have contributed to a developing jurisprudence in the application of the law.

#### **Background**

‘Garage’ premises vary dramatically. There is the (increasingly rare) forecourt with pumps, workshops carrying out servicing, repairs and MOTs, a used car lot and a small shop selling motor spares and accessories. Contrast this with a modern site retailing fuel from a convenience store selling a wide range of groceries and other items. For as *Paterson’s Licensing Acts* put it ‘service stations continue to be used increasingly for the purpose of shopping as well as, or instead of, places for the purchase of fuel ...’ (*PLA, 2000, p.xiii*).

#### **Burden of proof**

There is no general disqualification. Premises are only disqualified if they are primarily used as a garage. There is an important distinction here. It is sometimes said that applicants must show that the premises are primarily used as a shop. This is not the test. The test is are the premises primarily used as a garage? So, it is submitted, there must be significantly more garage use than other use for the premises to be disqualified. If there is roughly the same use, for example, as a shop and as a garage, there is no primary use and therefore no disqualification. The tribunal must be satisfied on a balance of probability that the premises are primarily used as a garage, otherwise the premises are not disqualified.

#### **Meaning of ‘used as a garage’**

The first task is to ascertain the meaning of the term ‘used as a garage’. What is garage use? The term is limited by the words of the legislation to four activities - the retailing of petrol or derv or the sale or maintenance of motor vehicles. Other activities that may relate to motor vehicles are therefore not included, for example car hire or a coach business. Of the four ‘garage’ activities, retailing of petrol or derv and sale of motor vehicles are straightforward and have not led to any difficulties of interpretation. ‘Maintenance of motor vehicles’ has.

#### **‘Maintenance of motor vehicles’**

Given its ordinary meaning ‘maintenance’ includes workshop activities such as the fitting of exhausts, tyres, clutches and engines or the carrying out of maintenance services. There is a dedicated workshop area with spanners, ramps, mechanics and large drums of oil. Any such activity will be included as garage use when assessing the primary use of the premises.

However, objectors to licences have, on occasions, sought to stretch this definition to include the sale of items such as motor oil and car care products (polish, air fresheners, de-icer, etc)



from the forecourt shop. While such an argument may have a certain superficial attractiveness – ‘it’s to do with motor vehicles therefore it must be garage use’ - closer inspection proves otherwise. It must be maintenance of motor vehicles; simply to be related to vehicles is not sufficient. It is generally agreed that such sales falls outside the definition of maintenance, as what they amount to is sales of items from a shop. The same items can be bought at a variety of premises, for example, most supermarkets; does this mean that those premises are then being used as a garage?

It is also sometimes claimed that car wash and jet wash facilities are maintenance of motor vehicles. Again, it is generally agreed that these are not the types of activity envisaged by the legislature. The washing is carried out by the customer, rather than by staff at the premises, and it is not ‘maintenance of motor vehicles’ in the generally accepted use of the term. It is cosmetic. While the changing of oil and tuning of engines is usually listed in a car maintenance schedule, washing the vehicle is not.

Evidence of how premises used

#### *Authorities*

Having arrived at an understanding of what constitutes ‘garage use’, how is such use to be measured? Initially both financial turnover and customer visits were considered. The former proved problematic on two grounds. First, the large amounts of duty and vat involved in fuel and some shop sales needed to be removed to make a fair calculation. Secondly, the turnover of the premises is a less accurate method of assessing customer use than measuring customer use. Thus evidence of customer use is generally provided.

Two High Court cases have assisted consideration of how the premises are used. The first is *Green v Justices for the Inner London Area* (13 June 1994) QBD (Divisional Court). This case is authority for the proposition that if figures for financial turnover are used they must be net of duty and vat. However, the judgment was that if net figures were presented the licensing justices ‘may’ have come to a different decision – not would have come to a different decision. *Green* also recognised ‘a large gain’ for applicants as there were many more shop customers than fuel customers.

The second case, *R v Liverpool Crown Court, ex parte Kevin John Goodwin* (17 December 1998) QBD (Divisional Court) was much more certain in its view that the: ‘... appearance of the premises and how it is known in the locality’ are not relevant: ‘the question must be, what is the intensity of use by customers at the premises? So that evidence such as that of customer lists, to take an example, might be highly material’.

As *Paterson’s Licensing Acts* put it ‘This seems to us, to be both an appropriate and practicable approach to the interpretation of a measure which, presumably, was intended by Parliament to bear upon the purposes for which the public actually use particular premises’ (2000, p.xiv).

Since *Goodwin*, data showing the intensity of use by customers are generally accepted as the best evidence of how premises are used. For most applications these data are produced in the form of a till analysis - either produced manually or, more usually, from computerised records such as EPOS tills (electronic point of sale).

#### *Presenting the data*

Figures for a number of weeks or months (not too far back as the tribunal is interested in the trading pattern of the premises at the date of grant for a full licence) are taken to show the number of customers that used the premises for garage use against other uses. Typically other uses will be shop use - sometimes referred to as a ‘basket analysis’ because it is customer visits rather than number of items purchased that are recorded. So the purchase on one item or ten items from the shop (a ‘basket’ of items) will be recorded as one transaction - as will a purchase of five or fifty litres of fuel. Some customers, of course, will purchase both shop goods and fuel - combining garage and non-garage use in one transaction. This will



then either be shown as a separate category - garage use, shop use and mixed garage and shop - or simply be divided and added equally to shop and garage use.

#### *Provisional grants*

Here it will be necessary to present projected figures to demonstrate how the premises will trade when they are built, extended, rebuilt, converted or in some other way altered that will lead to a change in their use. For the tribunal must look at the premises on the date that the licence is received - ie at final order. Tribunals may wish to hear evidence on the accuracy of such projections and how they were arrived at. This will usually be provided by expert evidence from those producing the figures - as to provenance, method of calculation and, importantly, examples of other applications where projections have been used and shown to be accurate.

#### Meaning of 'primarily'

Having established what is meant by garage use, and what evidence should be used to measure use, the tribunal then needs to look at these data to establish whether the premises are primarily used as a garage. What does 'primary' mean? For the Oxford English Dictionary it means 'In the first place, first of all, pre-eminently, chiefly, principally; essentially' (OED, vol. XII, p.472).

As mentioned above, this interpretation suggests that there must be significantly more garage use than other use. If there is roughly the same use, for example, as a shop and as a garage, there is no primary use and therefore no disqualification.

#### **Summary**

The Licensing Act 1988 amended the Licensing Act 1964 to include the provision that premises primarily used as a garage are disqualified for holding a justices' licence. The Licensing Act 2003 re-enacts that provision. The retail-trading environment for both local shops and garages/petrol filling stations has changed dramatically over the last fifteen years. Courts and committees have recognised this in the way in which they have approached the task of interpreting the legislation. When the 1988 Act was passed there were some 190 licensed garage/forecourt shops in England and Wales, today the number approaches 2000.

then either be shown as a separate category - garage use and mixed garage and shop - or simply be divided and added equally to shop and garage use.  
Provisional grants  
There will be necessity to request amended figures to demonstrate how the premises will trade when they are built, extended, altered, converted or in some other way adapted that will lead to a change in their use. For this purpose, it must be the provision on the date that the licence is granted - as at that date. Licences may wish to have evidence on the nature of such proposals and how they were arrived at. This will usually be provided by expert evidence from those providing the figures - as to government, market of, calculation and, moreover, evidence of other applications where proposals have been used and shown to be accurate.

Meaning of primarily  
Having established what is meant by garage use, and what evidence should be used to measure use, the tribunal then needs to look at what is meant by whether the premises are primarily used as a garage. What does primary mean? The Oxford English Dictionary means in the first place, that of all pre-eminently, chiefly, predominantly, essentially, (OED) - 2013-14.

As mentioned above, the interpretation suggests that there must be a significant more garage use than other use. If there is roughly the same use, for example, as a shop and as a garage, there is no primary use and the case on the facts of each.

Summary  
The Licensing Act 1968 created the Licensing Act 1968 - which the provision that premises primarily used as a garage are classified for holding a licence. The Licensing Act 2003 requires that provision. The meaning - which is not for both shop, single and garage/other filling stations has changed dramatically in the last 40 years. Courts and tribunals have recognised this in the way in which they have applied the test of interpreting the legislation. When the 1968 Act was passed there were some 100 licensed garage/other filling stations in England and Wales, today there are some 1000.



## Grocery sales at start of business/currently and forecasted

- When we took over the existing business in May of 2018 groceries at these premises were of a low- medium sales.
- In the last 6 months grocery sales have grown by over 40% and are continuing to grow.
- Expansion – the grocery sales will continue to grow due to several factors listed below.
  - Hard work and determination by myself and my staff providing a professional and rural shop experience.
  - In the very short coming future up to 120 properties are being built close to our rural garage this will increase the demand for grocery sale exponentially.
  - We are planning in the fore coming future to take over the adjoining business to increase out shop floor space and specialise in local Herefordshire produce on a much grander scale than we are excitingly.

## Basic List Of Groceries

We categorise ourselves as a rural general store because the footfall of traffic is to purchase groceries medication pet supplies, animal supplies, please find a small basic list as an example.

Frozen Foods - ready made meals, vegetables, meats, chips and fish.

Shelved Produce - bread, eggs tinned vegetables, fruits, fish, soups, general toiletries, packet mixes, pastas and sauces, oil and cereals.

Medication - pain killers, dental hygiene, shaving products and general medication.

Fridge – Milk, butter, ham, cheese, bacon, sausages, sandwiches and burgers.

Local Produce Section - Including a wide variety of Herefordshire cakes, cordial, biscuits, jams, spreads and preserves.

Pets - Sacks and tinned dog food, dog treats, pet essentials, accessories, bird feed, indoor pet supplies for hamster's guinea pigs' and rabbits.

Farm Animal Feed - sheep, horse, donkeys and chickens.

General Store Supplies - Confectionary sweets chocolate crisps and beverages

These lists can continue indefinitely.

You will be able to see some of these items in the photos that were provided at the beginning.



## Representation made by the Local Authority 20<sup>th</sup> December 2018

I am an officer authorised under the Licensing Act 2003.

I refer to the application made for a new premises licence in respect of 'Forge Filling Station, Wormbridge, Hereford, HR2 9DH.

The application applies for the sale of alcohol 0800 hours until 2130 hours daily.

The authority does **object in total to the grant of the licence for the sale of alcohol.**

This objection is based upon the fact that Section 176 of the 2003 Act prohibits the sale from premises which are used primarily as a garage, or are part of premises used primarily as a garage. Premises are used primarily 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,
- the maintenance of motor vehicles

The applicant has produced data concerning sales between May & October 2018. It is noted that on 4<sup>th</sup> July a new till system was installed.

The authority has taken a number of snap shots of that data which has shown the following:

13/07/18	Diesel Sales	46.97%	£1637.97
	Unleaded petrol	22.02%	£ 769.44
	Red diesel	6.38%	£ 222.99
	<b>Total</b>	<b>75.37%</b>	<b>£2630.40</b>
	<b>Total Sales</b>		<b>£3494.38</b>
	<b>Other sales</b>		<b>£ 863.98</b>
25/08/18	Diesel Sales	42.84%	£1833.85
	Unleaded petrol	26.85%	£1148.59
	Red diesel	12.14%	£519.54
	<b>Total</b>	<b>81.83%</b>	<b>£3501.98</b>
	<b>Total Sales</b>		<b>£4280.26</b>
	<b>Other sales</b>		<b>£ 778.28</b>
01/10/18	Diesel Sales	55.25%	£2204.02
	Unleaded petrol	20.27%	£ 808.54
	Red diesel	5.53%	£ 220.46
	<b>Total</b>	<b>81.05%</b>	<b>£3244.02</b>
	<b>Total Sales</b>		<b>£3989.04</b>
	<b>Other sales</b>		<b>£ 745.02</b>

posnow

SEARCH SITE

- Dashboard
- Transactions
- Sales Report
- Time Intervals
- Time Period
- Time Comparisons
- Sales by Product
- Employees
- Locations
- Size
- Misc Products
- Promotions
- Brands
- Suppliers
- Customer Types
- Reporting Categories
- Till Categories
- Multiple Choice Products
- Stock
- Customer
- Banking
- Accounting
- Auditing
- Scheduled Emails

REPORTING

SETUP

MANAGE

TILL

SUPPORT

WEB STAFF

APPS

## Sales Report

### Sales By Product (Daily Sales) [HELP](#)

[RETURN TO TILL](#)

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BitA (help us test this new user community)

Forget Printing Station

Show data from

Custom  
01 Oct 2018 - 01 Oct 2018

[CALCULATE](#)

Filter by Location

All Locations

Filter by Device

All Devices

Filter by Staff

All Staff

Search by Product Name

diesel

Filter by Tags

Select

[SEARCH](#)

NAME	DESCRIPTION	BARCODE	ORDER CODE	BIANO	QTY	MEASURED QTY	SALES INC. TAX	DISCOUNT	NET SALES INC. TAX	NET SALES EXC. TAX	COST PRICE EXC. TAX	TOTAL MARGIN	TOTAL MARGIN %
Diesel	Diesel Price				49		£2,204.02	£0.00	£2,204.02	£1,836.70	£0.00	£1,836.70	100.00%
Rcd	Rcd Diesel				5		£220.46	£0.00	£220.46	£209.96	£0.00	£209.96	100.00%
Diesel					54		£2,424.48	£0.00	£2,424.48	£2,046.66	£0.00	£2,046.66	100.00%

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<u>November</u>		<u>October</u>		<u>September</u>		<u>August</u>		<u>July</u>	
<u>Goods</u>	<u>fuel</u>	<u>Goods</u>	<u>Fuel</u>	<u>Goods</u>	<u>Fuel</u>	<u>Goods</u>	<u>Fuel</u>	<u>Goods</u>	<u>Fuel</u>
364	82	359	82	360	72	453	97	372	103
388	90	363	57	468	99	461	83	342	64
402	64	373	85	464	102	357	82	322	50
357	70	393	61	367	94	380	81	774	172
314	67	451	93	416	83	386	85	445	92
322	64	352	75	407	83	318	60	457	87
374	74	469	94	375	104	333	109	406	94
390	102	361	96	277	78	411	79	337	74
450	77	395	75	357	109	435	82	358	67
416	82	364	83	352	106	326	77	416	69
326	96	332	70	386	82	473	82	319	74
413	70	304	89	320	94	404	102	410	89
447	88	346	92	356	76	387	74	415	74
357	71	448	85	356	93	356	103	395	78
381	81	306	78	415	94	447	101	314	80
342	65	355	81	381	108	404	95	405	92
327	78	334	64	466	97	412	98	445	85
340	76	280	62	452	120	416	97	394	96
346	62	305	78	329	102	393	92	381	85
417	79	390	66	337	89	347	60	414	83
396	74	378	79	322	87	386	66	347	82
305	74	311	69	298	52	407	95	423	95
322	70	383	79	336	83	417	80	388	76
340	92	405	67	384	88	338	88	344	83
293	71	324	58	371	83	324	87	365	98
430	73	384	73	342	77	374	89	452	108
386	84	426	79	336	76	388	65	784	198
801	157	461	83	377	96	326	82	367	93
		402	88	412	70	414	90	473	76
		341	85	324	71	495	88		
						333	74		
<u>goods</u>	<u>fuel</u>	<u>goods</u>	<u>fuel</u>	<u>goods</u>	<u>fuel</u>	<u>goods</u>	<u>fuel</u>	<u>goods</u>	<u>fuel</u>
<u>10746</u>	<u>2233</u>	<u>11095</u>	<u>2326</u>	<u>11143</u>	<u>2668</u>	<u>12101</u>	<u>2643</u>	<u>12064</u>	<u>2617</u>

**goods total**      **fuel total**  
**78361**              **17357**

<u>June</u>		<u>May</u>	
<u>Goods</u>	<u>Fuel</u>	<u>Goods</u>	<u>Fuel</u>
297	85	355	64
389	96	326	76
395	80	375	79
347	86	290	67
438	70	278	59
338	87	381	92
431	97	338	75
452	87	413	82
388	98	301	71
360	81	315	61
299	75	300	53
330	74	409	87
258	82	317	91
387	61	338	89
355	91	414	80
330	89	269	67
305	77	332	92
304	86	377	71
295	83	397	87
411	87	374	101
435	104	336	89
430	88	385	76
284	88	292	77
358	77	347	79
265	67	417	73
268	69	368	77
330	56	330	95
371	61	290	90
361	89	409	77
378	93	292	63
		258	66
<u>goods</u>	<u>fuel</u>	<u>goods</u>	<u>fuel</u>
<b><u>10589</u></b>	<b><u>2464</u></b>	<b><u>10623</u></b>	<b><u>2406</u></b>



## Gaining Support

We have recently took it upon ourselves to raise a petition of support for us gaining our licence, we placed this on the shop counter for only 48 hours and only let local residential customers sign this, the variation was from parish councillors, local councillors, ex council solicitors and the general farming community who were all massively in support, as you can see from the amount of signatures raised in a very short period of time.

Please see attached a copy of this petition of support.

## Adjoining business and out buildings

The business comprises of our rural shop with an attached tack shop that is included in our business operations, several smaller outbuildings that hold animal stock, pet supplies, coal, gas and logs.

We hope the above information will help you in understanding we are more of a rural shop and multi business than a typical petrol station that you may pass when driving through the city of Herefordshire.