

Gloucester City Council

COMMITTEE	: LICENSING SUB-COMMITTEE
DATE	: 12 APRIL 2011
SUBJECT	: APPLICATION FOR A NEW PREMISES LICENCE FOR TUFFLEY SERVICE STATION, 387 STROUD ROAD, GLOUCESTER, GL4 0DA
WARD	: TUFFLEY
REPORT BY	: GROUP MANAGER, ENVIRONMENTAL HEALTH AND REGULATORY SERVICES
NO. OF APPENDICES	: A: APPLICATION FOR A PREMISES LICENCE FOR TUFFLEY SERVICE STATION, 387 STROUD ROAD BY ROC UK LTD B: SUPPORTING INFORMATION FOR APPLICATION C: PLAN OF PREMISES D: LOCATION MAP OF 387 STROUD ROAD E: REPRESENTATION INTERESTED PARTIES F: PETITION G: EXTRACT FROM S182 GUIDANCE H: LIST OF MANDATORY CONDITIONS
REFERENCE NO.	: ES21113

1. PURPOSE OF REPORT

- 1.1 To present to members an application for a new premises licence made under section 17 of the Licensing Act 2003 for Tuffley Service Station, 387 Stroud Road, Gloucester GL4 0DA, received from ROC UK Ltd.

2. RECOMMENDATIONS

- 2.1 Having considered the application, any relevant representations, the legislative provisions, the Council's Statement of Licensing Policy and the Home Secretary's Guidance, Members have the following options as considered necessary to promote the Licensing Objectives:

- (a) To accept the application and attach conditions as consistent with the operating schedule.
- (b) To accept the application and modify the conditions of the licence which includes altering, omitting or adding new conditions.
- (c) To reject the whole, or part of the application.

3. BACKGROUND

- 3.1 Members are advised that when considering an application for a new premises licence the following options are available to them by virtue of the Licensing Act 2003, Part 3, section 18, paragraphs 3 and 4:

- (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 conditions which must under sections 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*

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.'

If none of these steps are required the application must be granted.

3.2 Members should note that this application has policy implications as detailed in section 5 of this report.

3.3 Members are reminded that all applications must be considered on their merits, and that findings on any issues of fact should be on the balance of probability.

4. APPLICATION

4.1 This is an application for a new premises licence made in accordance with Section 17 of the Licensing Act 2003. The application was received by the Licensing Authority on 16 February 2011 and has been advertised in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.

4.2 The premises to which the application relates is described on page four of the application which is attached as **Appendix A**. As can be seen the premises is a convenience store sited on an ESSO forecourt.

4.3 Section 176 of the Licensing Act 2003 provides:

“176 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—

(a) premises situated on land acquired or appropriated by a special road authority, and for the time being used, for the provision of facilities to be used in connection with the use of a special road provided for the use of traffic of class 1 (with or without other classes); or

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

- 4.4 In order to determine if the premises falls within s176 reference can be made to the intensity of use by customers at the premises. The applicant has provided additional information in support of their application including an analysis of customer flow which can be seen at **Appendix B**.
- 4.5 Following the Section 182 Guidance detailed below and the recent case of *R (on the application of) Murco Petroleum Limited v Bristol City Council* [2010] EWHC 1992 (Admin) it is within the Licensing Authority’s remit to determine the primary use of the premises. In reaching such a decision the Committee may request additional information from the applicant.
- 4.6 The application (**Appendix A**) requests the following licensable activities:
- (a) The provision of late night refreshment (Section L) indoors only from 23:00 hours to 05:00 hours seven days a week, &
- (b) The supply of alcohol (Section M) for consumption off the premises only 24 hours a day, seven days a week, &
- 4.7 The applicant seeks permission for the premises to remain open 24 hours a day, seven days a week.
- 4.8 A plan of the premises and map of the location of the premises are attached as **Appendix C** and **Appendix D** respectively.
- 4.9 The applicant has indicated at Section P the steps they intend to take to promote the licensing objectives.
- 4.10 Four representations were received from interested parties, all are attached at **Appendix E**.
- 4.11 One petition was also received from Mr Richard Sheppard, and can be seen at **Appendix F**. Members will note that a large number of residents who signed the petition did not enter an address and of those that did many could not be said to live within the vicinity of the premises. As with any petition it is important to consider if those signing could be directly affected by the premises should a licence be granted. As Members are aware unlike with individual representations it can be difficult to ascertain from a petition how individual residents who have signed the petition will be directly affected. As such Members will wish to consider the appropriate weight to attach to the concerns raised by the petition, namely noise,

littering and unruly behaviour that it is alleged would result from the grant of the premises licence.

- 4.12 12 representations were rejected as they were not from interested parties.
- 4.13 The applicant and interested parties have been given a Notice of Hearing in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.

5. THE LICENSING POLICY STATEMENT AND GUIDANCE

- 5.1 Sections 3, 5 and 6 of Gloucester City Council's Licensing Policy Statement outline the authority's policy with regard to the licensing objectives. Section 7 refers specifically to licensing hours.
- 5.2 The relevant parts of the Amended Guidance issued under section 182 of the Licensing Act 2003 (October 2010) by the Home Secretary are Chapter 2, on the four licensing objectives, Chapter 8 on Applications for premises licences, Chapter 10 conditions attached to premises licence, Chapter 13, paragraphs 13.64-13.68 on the relationship between the planning and licensing regimes and Chapter 5, paragraphs 5.23 – 5.25 on garages.
- 5.3 Paragraphs 10.1 to 10.18 deal with the attaching of conditions to licences and state that only necessary, proportionate conditions, which promote the licensing objectives, should be attached to the licence if it is granted. The Licensing Authority may then only impose such conditions as are necessary to promote the licensing objectives arising out of the consideration of the representations. It also states that the pools of conditions that are supplied by the Home Secretary should not be applied universally, irrespective of particular circumstances, but may be used as examples that can be tailored to suit individual premises and particular situations. It is also advised that any conditions the Licensing Authority sees fit to attach to the licence should not replicate any other legislation, such as the Licensing Act 2003 itself, or the Equality Act 2010.
- 5.4 Para 13.65 of the Guidance advises that the planning and licensing regimes involve the consideration of different (albeit related) matters. For instance, whereas licensing considers public nuisance, planning considers amenity. Licensing applications should not therefore be a re-run a planning application. A Licensing Sub-Committee is not bound by a decision of a planning committee.
- 5.5 A premises licence does not relieve the holder from any requirements under planning law. In cases where a planning restriction imposing a terminal hour for a premises has been set and this differs from the hours permitted by a premises licence, the licence holder must observe the earlier time.
- 5.6 Paragraph 2.10 of the authority's Licensing Policy Statement states "*Where relevant representations are received applications will be considered on their individual merits and decisions made in relation to licensing applications will be made entirely separately from any decision in relation to planning.*"
- 5.7 Paragraphs 5.23 to 5.25 of the section 182 Guidance are attached as **Appendix G**. As referred to above the Committee may consider the primary use of the premises. In reaching this decision the committee may request additional information from the

applicant if required. An alternative course of action which is also permissible would be to grant the premises licence irrespective of its primary use. Should it become apparent at a later date that the premises is in fact primarily a garage or forms part of a premises which is primarily a garage the premises licence would cease to have effect with regard to authorising the sale of alcohol (the provision of late night refreshment would not be affected). Any sale of alcohol made from such a time would be unauthorised, and an offence under section 136 of the Licensing Act 2003 would be committed. Enforcement would fall upon the Licensing Authority and Gloucestershire Constabulary.

6. CONCLUSIONS

- 6.1 Members should consider the relevant facts, guidance and representations and make a decision in accordance with the options outlined in paragraph 2.1 of this report.
- 6.2 Members should also be aware of a case heard in the Court of Appeal. *Daniel Thwaites v Wirral Borough Magistrates Court* [2008] EWHC 838 (Admin) concerned an appeal against a decision by the Magistrates to impose restrictions on the hours of operation of a licensed premises without proper evidence and by giving their own views excessive weight. The resulting decision to limit the hours of operation without it having been established that it was necessary to do so in order to promote the licensing objectives was ruled unlawful and the decision was quashed.

7. FINANCIAL IMPLICATIONS

- 7.1 There are no financial implications relating to this report.

8. LEGAL IMPLICATIONS

- 8.1 The Licensing Sub-Committee is asked to consider an application made under Section 17 for a premises licence to be determined under Section 18.
- 8.2 To consider the application, the Sub-Committee must be satisfied:
 - a) the application is properly made.
 - b) the applicant has given proper notice.
 - c) the applicant has satisfied the advertising requirements.
- 8.3 The four licensing objectives must be considered of equal importance and are:
 - a) The prevention of crime and disorder
 - b) Public safety
 - c) The prevention of public nuisance, and
 - d) The protection of children from harm.
- 8.4 The Sub-Committee must, having regard to the application and any relevant representations, decide on any of the options set out in the report at paragraph 2.1 (a)- (c).
- 8.5 Section 176 of the Act deals with the prohibition of the sale of alcohol from, among other things, certain garages that retail petrol. Section 176(1) states

“ no premises licence.....has the effect to authorise the sale of alcohol by retail on or from excluded premises.”

- 8.6 The sale of alcohol under a premises licence relating to premises that is primarily a garage would be an unauthorised licensable activity and liable to a prosecution action under Section 136 of the Act.
- 8.7 It is for the Council to decide whether or not the premises are “used primarily as a garage”. The expectation is the applicants will provide evidence at the hearing to establish that the primary use of the garage is not fuel sales. .
- 8.8 The Sub-Committee has powers to adjourn or carry forward the hearing to additional specified dates.
- 8.9 For the purposes of determining an application, a "relevant representation" means a representation which:
- a) is relevant to one or more of the licensing objectives.
 - b) is made by a responsible authority or an interested party within the prescribed period.
 - c) has not been withdrawn.
 - d) if having been made by an interested party (who is not also a responsible authority), that they are not in the opinion of the Licensing Authority frivolous or vexatious.
- 8.10 For these purposes an “interested party” are those who are living in the vicinity of the application premises and those involved in a business in the vicinity of the application premises.
- 8.11 In deciding what action, if any, it should take, the Sub-Committee Members must direct their minds to the causes and concerns which the relevant representations identify. Any action should generally be directed to these causes and should always be no more than is a necessary and proportionate response. In particular, any detrimental financial impact of the Sub-Committees decision must be necessary and proportionate. The Sub- Committee is required to have regard to the DCMS Guidance when making its decision. However the Guidance does not cover every possible situation, so long as the Guidance has been properly and carefully understood, the Sub-Committee may depart from it if they have reasons to do so. Full reasons must be given for any departure from the DCMS Guidance..
- 8.12 Following the case of Daniel Thwaites v Wirral Borough Magistrates’ Court 2008, referred to in paragraph 6.2 of the report the Sub-Committee needs to avoid:
- a) speculating of what might happen in the absence of evidence that harm would or could happen.
 - b) not paying attention to Government Guidance where failing to follow it requires good reasons to be given
 - c) imposing conditions that do not promote the licensing objectives.
- 8.13 Where the Sub-Committee determines an application it must notify the determination and reasons for making it to:

- a) the applicant.
- b) the person who made the relevant representations.
- c) the Police.

- 8.14 It should be noted by the Sub-Committee that in relation to this application, the Council has a number of roles through Council services. No response to the application has been received from the Environmental Health Pollution Control and Health and Safety Teams, or Development Control.
- 8.15 In considering the application, the Sub-Committee is solely performing the role of Licensing Authority. The Sub-Committee sits in a quasi-judicial capacity and must act impartially. It must offer a fair and unbiased hearing of the application. The Sub-Committee needs to disregard the wider Council objectives and other statutory roles and must direct themselves to making a determination solely based on the licensing law, Guidance and the Council's Statement of Licensing Policy.
- 8.16 As a quasi-judicial body, the Sub-Committee is required to consider the application on its merits. It must take into account only relevant factors and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant.
- 8.17 Under the Human Rights Act 1998, the Sub-Committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision.
- 8.18 The Sub-Committee has a duty under Section 17 of the Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the City.
- 8.19 Interested Parties, Responsible Authorities and the applicant have the right to appeal the Sub-Committee's decision to the Magistrates' Court within a period of 21 days beginning with the day on which they were notified of the decision to be appealed against.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 There is a right of appeal to the Magistrates' Court for both the applicant and all interested parties. Costs may be awarded against the Council on successful appeal if the Council has not acted reasonably.

10. PREDICTIVE IMPACT ASSESSMENTS (EQUALITIES) AND COMMUNITY COHESION

- 10.1 None.

11. OTHER CORPORATE IMPLICATIONS

- 1. Community Safety

The four licensing objectives of the Licensing Act 2003 are designed to support community safety and are dealt with in the body of the report.

2. Environmental

As above – dealt with in the body of the report.

3. Staffing

None.

4. Trade Union

No comments.

Background Papers : Gloucester City Council Licensing Hearing Procedure

Published Papers : Licensing Act 2003
Licensing Act 2003 (Hearings) Regulations 2005
Gloucester City Council Licensing Policy Statement
Home Secretary (Home Office) Guidance issued under section 182 of the Licensing Act 2003 (Oct 2010)

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