

AGENDA
ITEM

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SOUTH HAMS DISTRICT COUNCIL

NAME OF COMMITTEE	Licensing Sub-Committee
DATE	Wednesday 7 December 2011
REPORT TITLE	Application for a new Premises Licence
Report of	The Business Support / Licensing Manager
WARDS AFFECTED	Erme Valley

Summary of report:

To determine an application for a new Premises Licence at **Shell Carew, A38 South Brent, South Brent, TQ10 9ER**, firstly in accordance with Section 176 of the Licensing Act 2003 to decide the primary use of the premises. If the premises are primarily used as a 'garage' selling petrol or diesel then the applicants are prohibited from selling alcohol. If determined the primary use of the premises is not a 'garage' but a 'shop' that also sells fuel, to continue and determine the application in accordance with Section 18 of the Licensing Act 2003.

Financial implications:

There are no direct financial implications to the Council from this Report.

RECOMMENDATIONS:

That the Sub-Committee consider the application for a new Premises Licence and make determinations in respect of this application, namely to:

- a) consider whether premises would be "excluded premises" as defined under Section 176 Licensing Act 2003 as:
 - i) premises used primarily as a garage or which form part of premises which are primarily so used. (If so determined then (b) below may be omitted, if not 'excluded premises' to continue with (b) below).
- b)
 - i) grant the application as submitted, subject to any Mandatory Conditions required;
 - ii) modify the conditions of the licence;
 - iii) exclude any of the licensable activities to which the application relates;

- iv) to refuse to specify a person in the licence as the premises supervisor:
- v) reject the application,

in line with the licensing objectives (Section 4) contained within the Licensing Act 2003.

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1. BACKGROUND

- 1.1 The Licensing Authority has received an application for a new premises licence from Lockett & Co on behalf of Shell UK Oil Products Limited for **Shell Carew, A38 South Brent, South Brent, TQ10 9ER**. A copy of the application is attached (**Appendix 'A'**).
- 1.2 The applicant also enclosed a document named 'Analysis of Customer Flow Shop v Forecourt' providing data showing the number of customer transactions from the premises relating to fuel and number of transactions relating to shop items over the period 1st March to 31st May 2011 (**Appendix 'B'**). In addition, further information has been provided from the applicant relating to the gross margin on fuel and convenience store sales for the same period (**Appendix 'B'**).
- 1.3 The application is for the sale and supply of alcohol for consumption off the premises, every day, 24hrs per day. Also for the provision of late night refreshment every day from 11pm to 5am. (The applicants already have a licence for late night refreshment).
- 1.4 As the applicants wish to provide the sale of alcohol and provision of late night refreshment, under the Licensing Act 2003 they require a premises licence. As regards to this application, only interested parties, responsible authorities or district councillors may make representations.
- 1.5 After discussion with the Police, the applicant has agreed to amend the hours for sale of alcohol to every day from 6am to 11pm and also to amend the condition in section P(b) in relation to CCTV (see **Appendix 'C'**). Subject to these amendments being included on the premises licence, the Police make no objection to the application.
- 1.6 We have received representations from four District Councillors in respect of this application. These can be found in **Appendix 'D'**. The representations relate to all four of the licensing objectives: prevention of crime and disorder; public safety; prevention of public nuisance; protection of children from harm.

- 1.7 It has not been possible for the Licensing Department to mediate with all parties therefore a satisfactory conclusion has not been possible.

(Please note that due to the amount of paperwork contained within these appendices, full copies have only been circulated to the Sub-committee Members. Any Interested Parties who would like to receive full (or part) copies are asked to contact Member Support Services on (01803) 861273.)

2. ISSUES FOR CONSIDERATION

- 2.1 As mentioned above, representations have been received from four District Councillors. Their representations are in **Appendix 'D'**. As can be seen, their objections relate to all four of the licensing objectives.
- 2.2 Under Section 176 Licensing Act 2003 alcohol is prohibited from being sold or supplied at motorway service areas; and restricts the circumstances in which alcohol may be sold at garages. 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; and
 - the maintenance of motor vehicles.
- 2.3 National guidance issued under Section 182 Licensing Act 2003 (see 5.1 - 5.4 below) states that to establish primary use, the approach so far endorsed by the courts is based on intensity of use.
- 2.4 We have received from the applicant an 'Analysis of Customer Flow, Shop v Forecourt' (**Appendix 'B'**) which presents data representing number of customer transactions for shop items, number for fuel and total number of transactions over period 1st March to 31st May 2011. When both shop items and fuel items were purchased a transaction is logged under both categories. The applicant has confirmed that the sale of more than one shop items in one transaction would only be logged as one shop transaction.
- 2.5 The applicant has also provided information regarding gross margin on fuel and convenience sales for the same period 1st March to 31st May 2011. It has been confirmed that the shop is a franchise and as such makes a profit of "0.005 pence" per litre on fuel which equates to ½p per litre. Profit made on shop items is 22%.
- 2.6 The Licensing Department has requested that further information be provided before the hearing, showing the breakdown of customer transactions purchasing fuel only, purchasing shop items only and number of mixed transactions for both fuel and shop items. It has also been requested that data for the period 1st June to 31st August 2011 be provided.

2.7 The Sub Committee will now need to consider this application.

3. STATUTORY BODIES' RESPONSE

3.1 Devon & Cornwall Constabulary
No representations subject to the agreed amendments.

3.2 Devon & Somerset Fire & Rescue Service
No representations have been received.

3.3 Area Child Protection Committee and Local Safeguarding Children Board
No representations have been received.

3.4 Devon Trading Standards
No representations have been received.

3.5 South Hams District Council, Environmental Health Department (Pollution)
No representations have been received.

3.6 South Hams District Council, Environmental Health Department (Health & Safety)
No representations have been received.

3.7 South Hams District Council, Planning Department
No representations have been received.

4. RELEVANT LICENSING POLICY CONSIDERATIONS

Licensing Objectives

4.1 Section 2.1 of the Policy states: The Licensing Authority has a duty under the Act to carry out its licensing functions with a view to promoting the four licensing objectives.

(These objectives are the only matters to be taken into account in determining the application and any conditions attached must be necessary to achieve the licensing objectives).

(This is having first determined whether the premises are 'excluded' or not).

4.2 Section 2.2 of the Policy states: A licence will only be granted where the Licensing Authority is satisfied that these objectives have been met.

4.3 Section 2.3 of the Policy lists the kind of measures the Licensing Authority will be expecting to see taken into account to promote the objectives.

Conditions

- 4.4 Sections 2.5 & 2.6 of the Policy sets out additional legislation, strategies, policies and guidance that the Licensing Authority will have regard to and Section 4 of the policy sets out what the Sub-Committee should consider before imposing conditions on a licence.
- 4.5 The Guidance issued under Section 182 Licensing Act 2003 which was revised and re-published in October 2010 also states:
- 4.6 The Licensing Authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions. It may then only impose such conditions that are necessary to promote one or more of the four licensing objectives. Such conditions must also be expressed in unequivocal and unambiguous terms to avoid legal dispute (paragraph 10.11 of guidance).

Licensing Hours

- 4.7 Sections 6.1 & 6.2 of the Policy states: The Licensing Authority will deal with the issue of licensing hours on the individual merits of each application. When the Authority's discretion is engaged, consideration will be given to the individual merits of an application but the presumption will be to grant the hours requested unless there are objections to those hours raised by Responsible Authorities or Interested Parties on the basis of the licensing objectives. However, when dealing with licensing hours beyond midnight it is more likely that relevant representations will be made unless there are higher standards of control included within operating schedules to promote the licensing objectives, especially for premises which are situated near residential areas or in areas where anti-social disorder takes place.
There is no presumption within the legislation for longer opening hours.
- 4.9 Section 6.3 of the Policy states: When relevant representations are made to the Licensing Authority by Interested Parties or Responsible Authorities, concerning the prevention of crime and disorder licensing objective, the discretion of the Licensing Authority will be engaged. When considering the representations the Licensing Authority will give due weight to the alcohol related violence statistics, especially on a Friday and Saturday evening and generally expect premises used for the sale or supply of alcohol or the supply of hot food or hot drinks that wish to operate after midnight, to have CCTV installed inside and outside the premises included in their operating schedule.
- 4.10 Section 6.4 of the Policy states: In considering relevant representations, the Licensing Authority will consider the adequacy of measures proposed to deal

with the potential for nuisance and/or public disorder having regard to all the circumstances of the case.

- 4.11 Section 6.5 of the Policy states: The terminal hours will normally be approved where the Applicant can show that the proposal would not adversely affect the licensing objectives unless, after hearing relevant representation the Licensing Authority believe it necessary, proportionate and reasonable to restrict the hours required.
- 4.12 Section 6.7 of the Policy states: Shops, stores and supermarkets will generally be permitted to sell alcohol for consumption off the premises during the normal hours they intend to open for shopping purposes, unless there are exceptional reasons relating to the licensing objectives, in particular the prevention of crime and disorder and public nuisance.

Children

- 4.13 Section 7.1 of the Policy states: The Licensing Authority recognises the great variety of premises for which licences may be sought. These will include theatres, cinemas, restaurants, pubs, nightclubs, cafes, takeaways, community halls and schools. Access by children to all types of premises will not be limited unless it is considered necessary to do so in order to protect them from physical, moral or psychological harm.
- 4.14 Section 7.2 of the Policy states: When deciding whether to limit access of children the Licensing Authority will judge each application on its own individual merits. Examples which may give rise to concern in respect of children include premises: -
- where entertainment of an adult or sexual nature is provided
 - where there is a strong element of gambling taking place
 - with a known association with drug taking or dealing
 - where there have been convictions of the current management for serving alcohol to those under 18
 - with a reputation for underage drinking
 - where the supply of alcohol for consumption on the premises is exclusive or primary purpose of the services provided at the premises.

5. LEGAL IMPLICATIONS

- 5.1 Section 176 of Licensing Act 2003 prohibits the sale of alcohol at motorway service areas and restricts the circumstances in which alcohol may be sold at garages. The sale of supply of alcohol is prohibited 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:
- the retailing of petrol;
 - the retailing of derv;

- the sale of motor vehicles; and
- the maintenance of motor vehicles.

5.2 National Guidance issued under Section 182 Licensing Act 2003 part 5.23 -5.25 states:

5.3 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.

5.4 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.

5.5 The Act requires mandatory conditions to be imposed (*if applicable) on the licence, the wording of which is prescribed by the Act but may be summarised as follows:

**(a) Section 19 - Mandatory conditions relating to the supply of alcohol
(*This condition is applicable)**

No alcohol may be supplied unless there is a Designated Premises Supervisor who also holds a personal licence.

Every supply of alcohol under a premises licence must be made or authorised by a personal licensee

**(b) Section 19A - Irresponsible drinks promotions
(*This condition is not applicable to an off sales application)**

Staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(c) Section 19A - No alcohol to be dispensed directly into the mouth of another person

(*This condition is not applicable to an off sales application)

No alcohol is dispensed directly by one person into the mouth of another

(d) Section 19A - Free drinking water

(*This condition is not applicable to an off sales application)

That free tap water is provided on request to customers where it is reasonably available.

**(e) Section 19A - Age verification policy
(*This condition is applicable)**

- (1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.
- (2) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

(f) Section 19A - Minimum measures for alcoholic beverages

(*This condition is not applicable to an off sales application)

The responsible person shall ensure that-

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures-

- (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml; and
- (b) customers are made aware of the availability of these measures.

(g) Section 20 - Mandatory condition relating to exhibition of films

(*This condition is not applicable to an off sales application)

Children may only be admitted to films in accordance with the classification recommendations of the British Board of Film Classification, or as recommended by the Licensing Authority.

(h) Section 21 - Door Supervision

(*This condition is applicable)

Where door supervisors are specified by condition, those individuals must be licensed by the SIA.

- 5.6 As there have been relevant representations in respect of the new premises application, this hearing must be held. (Relevant representations are about the likely effect of the grant of the application on the promotion of the licensing objectives, by interested parties or responsible authorities). The sub-committee must disregard any information or evidence not relevant to the licensing objectives.
- 5.7 The sub-committee must consider this application firstly in accordance with Section 176 of the Act and make a determination whether the premises are used primarily as a garage selling petrol or diesel or are part of premises used

primarily used for selling petrol or diesel. If this is so determined then there is a prohibition on selling alcohol. If the determination is the premises are a shop that sells petrol or diesel then the matter may proceed in accordance with Section 4 of the Licensing Act 2003, which requires that licensing functions must be carried out with a view to promoting the four licensing objectives. The Licensing Authority must also have regard to its own licensing policy and the Secretary of State's guidance, but may depart from both if it has good reason to do so. Those reasons should be stated.

- 5.8 The Act requires (Section 18) that in dealing with a new application, the committee takes any of the following steps which are necessary for the promotion of the licensing objectives:
- (a) To grant the Licence subject to:-
 - i any Mandatory Conditions required;
 - ii modifying the conditions which have been specified in the operating schedule;
 - (b) to exclude 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

The Sub-Committee must give its reasons for its decision to take any of these steps. Similarly, if the application is rejected, the Sub-Committee must give its reasons.

- 5.9 The committee will need to consider the hours of operation proposed, the effectiveness of the operating schedule proposed by the applicant, the representations received, the location of the premises in relation to residential properties, the history of the management of the premises, the evidence produced of any problems in the past, and the likely impact of any extension of hours and activities, public transport, taxi availability, the right the applicant has to operate a business and balancing the rights of residents to the quiet enjoyment and privacy of family life. That South Hams relies on tourism, with the population in the district doubling in the summer months with holidaymakers both from this country and international visitors who are, in the main, families with young children and retired people – the very segment of society who would perhaps be deterred by anti-social behaviour. These issues, and any other relevant ones, may be explored at the hearing in so far as it reflects the four licensing objectives.

- 5.10 If the Sub-Committee rejects the application, determines the premises are a primarily a 'garage retailing petrol or diesel' or modifies the conditions of the licence, the applicant or Interested Parties or Responsible Authorities may appeal within 21 days of notification of the decision to the Magistrates' Court. Those making relevant representations may also appeal if they believe that the licence should not have been varied, or that, when varying the licence, the

Licensing Authority ought not to have modified the conditions, or ought to have modified them in a different way. The Magistrates' Court may dismiss the appeal, or substitute its own decision, or send back the case to the Licensing Authority with directions as to how the case is to be dealt with. The Magistrates' Court may make any costs order it thinks fit.

5.11 If extended hours/licensable activities are granted, the Licensing Act contains review provisions which enable those living or running businesses in the vicinity of the premises, bodies representing them or any of the responsible authorities to apply to this Licensing Authority for a review of the licence. A hearing follows which enables the sub-committee to use the normal powers at a hearing (set out above) but also to suspend the licence for a period of up to three months or to revoke it.

6. FINANCIAL IMPLICATIONS

6.1 There are no direct financial implications to the Council from this Report.

7. RISK MANAGEMENT

7.1 The risk management implications are:

Opportunities	Benefits
<p>To review the application in line with:</p> <ul style="list-style-type: none"> • The Licensing Act; • National Guidance issued by the Secretary of State, and, • The South Hams District Council Statement of Licensing Policy. <p>To create an increased opportunity for employment in the district.</p> <p>An opportunity to maintain the districts distinctive environment whilst enabling access and sensitive development.</p> <p>To consider whether the proposal would promote tourism. The population doubles in the summer months with tourists and international visitors who are, in the main, families with young children and retired people – the very segments of society who would perhaps</p>	<p>To be able to give consideration to representations made by 'Interested Parties' and / or 'Responsible Authorities' in line with the Licensing Objectives, namely:-</p> <ul style="list-style-type: none"> • The prevention of Crime and Disorder; • Public Safety; • The prevention of public nuisance; and • The Protection of children from harm.

be deterred by anti-social behaviour.	
Issues/Obstacles/Threats	Control measures/mitigation
<p>The need to address the four Licensing Objectives written within the Act namely:</p> <ul style="list-style-type: none"> • The prevention of Crime and Disorder; • Public Safety; • The prevention of public nuisance; and • The Protection of children from harm. <p>(Also listed above as a benefit)</p> <p>Due consideration should be given to Guidance issued by the Secretary of State under section 182 of the said Act 2003.</p> <p>Due consideration should be given to the Council's Licensing Policy Statement.</p> <p>Failure to adequately consider these issues could result in the Council facing an appeal to the Magistrates Court.</p>	<p>The Licensing Authority follows strict legislation in accordance with the Licensing Act 2003 and adheres to the statutory instruments contained within the Act.</p>

Corporate priorities engaged:	There is a link to the Council's priority of improving Community Life.
Statutory powers:	Licensing Act 2003
Considerations of equality and human rights:	Compliance with the Human Rights Act 1998 – Article 6: Right to a fair hearing
Biodiversity considerations:	Not applicable
Sustainability considerations:	As above under corporate priorities engaged
Crime and disorder implications:	Section 17 of Crime and Disorder Act 1998 applies.
Background papers:	Responses to Notices of Hearing from Interested Parties

	<p>Summary of Key Points</p> <p>Guidance on Meeting the Licensing Objectives</p> <p>The Licensing Act 2003</p> <p>Guidance issued under Section 182 of the Licensing Act 2003</p> <p>The District Council's Statement of Licensing Policy</p>
<p>Appendices attached:</p>	<p>Appendix A – application for new premises licence</p> <p>Appendix B – data provided by applicants relating to intensity of use of the shop</p> <p>Appendix C – police agreed amendments</p> <p>Appendix D - representations</p>