

Cheltenham Borough Council

Licensing Sub - Committee (Alcohol and Gambling) – 7 August 2024

Licensing Act 2003: Determination of a New Application for a Premises Licence

Asda Express PFS Sixways 231 London Road, Charlton Kings, Cheltenham

Report of the Licensing Officer

1. Introduction

1.1 The Licensing Act 2003 (the 2003 Act) allows applicants to apply for a premises licence at any time. In this case, an application was received on May 31st 2024 from Euro Garages Limited in respect of Asda Express PFS Sixways, Sixways Service Station, 231 London Road, Charlton Kings, Cheltenham. A copy of the application is included at **Appendix 1**.

1.2 The applicant has requested for a premises licence to permit:-

Sale by Retail of Alcohol - Every Day 00:00 - 00:00

Late Night Refreshment - Every Day 23:00 - 05:00

1.3 If this application is approved a premises licence would be issued.

1.4 Implications

Legal

A sub committee is required to discharge its duty and determine an application with a view to promoting the licensing objectives. These objectives, which are set out in section 4(2) of the Licensing Act 2003, 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.

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2. Application (Ref. 24/01013/PRMA)

2.1 Applicant: Euro Garages Limited

2.2 Agent: Gosschalks LLP

2.3 Premises: Asda Express PFS Sixways, 231 London Road, Charlton Kings, Cheltenham

3. Responsible Authorities

3.1 No relevant representations were received from any Responsible Authorities.

Asda Express PFS Sixways	Page 1 of 6	Last updated 25 July 2024
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4. Interested Parties

4.1 A representation has been received from one local resident as below:

Good afternoon, As a resident living directly opposite the Sixways Asda Express, I would strongly oppose the proposed license for serving alcohol and 'late night refreshment' until 5am. This is likely to result in noise, antisocial behaviour and litter - it doesn't seem appropriate for a residential area. We are already often disturbed by noise from the Asda/Esso garage at night and I do not want to see this getting worse.

5. Local Policy Considerations

5.1 The paragraphs below outline the relevant extracts from the authority's adopted Statement of Licensing Policy (Dec 2020). Members should refer to the full statement available on the authority's website for a full understanding of the local policy considerations.

5.2 Policy Vision Statement - We want Cheltenham to be a safe and clean town that offers a greater diversity in the nighttime economy that is less focused on alcohol and protects the quality of life for residents.

5.3 The main purpose of this policy is to provide clarity to applicants, responsible authorities, elected Members and other persons on how the authority will determine applications for the sale/supply of alcohol, the provision of regulated entertainment and the provision of late-night refreshment and also to provide a basis for all licensing decisions taken by the authority.

5.4 The objective of this policy is to:

- a) promote the four licensing objectives;
- b) ensure that the premises are appropriate for their proposed use;
- c) ensure the premises layout and condition is acceptable for the proposed use;
- d) ensure that the premises are being managed responsibly; and
- e) promote the policy vision statement.

5.5 This policy also seeks to promote the authority's wider priorities, in particular that:

- Cheltenham has a clean and well-maintained environment;
- Cheltenham has a strong and sustainable economy;
- Communities feel safe and are safe;
- People are able to lead healthy lifestyles; and
- Our residents enjoy a strong sense of community and are involved in resolving local issues.

Licensing Objectives

5.6 The authority will carry out its licensing functions under the 2003 Act with a view to promoting the four licensing objectives, which are:

- a) The prevention of crime and disorder;
- b) Public safety;
- c) The prevention of public nuisance; and
- d) The protection of children

5.7 In determining a licensing application, the overriding principle adopted by the authority will be that each application is determined on its merits. Licence conditions will be tailored to the individual application and only those necessary to promote the licensing objectives will be imposed.

5.8 The authority will have regard to matters affecting the residential population and the amenity of the area, where the licensing objectives are relevant. These include littering, noise, street crime and the capacity of the infrastructure.

Asda Express PFS Sixways	Page 2 of 6	Last updated 25 July 2024
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- 5.9 Each of the four objectives is of equal importance and will be considered in relation to matters centred on the premises or within the control of the licensee and the effect which the operation of that business has on the vicinity.

Core Hours for Licensable Activities

- 5.10 The authority believes that licensable activities carried on within the core hours set out below will generally not have a harmful impact on the licensing objectives, address the concerns raised by local residents and businesses and are less likely to attract representations.

Type of premises	Commencement Hour No earlier than	Terminal hour No later than
Off licence	09:00	23:00

Members should consider the context of the application and the relevance of the core hours provided within the adopted Statement of Licensing Policy (Dec 2020). Although core hours are outlined for off licence premises, this application is for a petrol station with alcohol sales rather than a premise with off licence sales as the primary activity. Members will need to consider the relevance of the core hours in the policy, as there might be significant differences between the operation of a typical off licence and a petrol station with alcohol sales. This could suggest the relevance of the core hours to this application may be less, based upon the location, existing business operation, etc.

- 5.11 Where relevant representations have been made, it will take the following matters into consideration when making a decision. These are not a definitive list and other matters may be considered:
- Operating schedules - demonstration of compliance with management standards to support each of the licensing objectives.
 - Proximity to residential accommodation - the likelihood of the operation to have an adverse impact on the peace and quiet of local residents.
 - Potential noise and nuisance from people leaving and entering the premises.
 - Ability to demonstrate that systems in place to ensure timely dispersal of customers away from residential areas.
 - Use of external areas for carrying out the licensable activities and potential noise impact on local residents.
 - Proposed hours of the licensing activities and general opening times for the public – The use of winding down periods to enable more efficient dispersal.
 - Type of use – alcohol led premises such as pubs, bars and nightclubs, off licenses and hot food take away premises are more likely to be associated with crime and disorder and public nuisance than other premises such as seated restaurants, theatres, cinemas and other cultural activities.
 - Availability of public transport to assist in the timely dispersal of customers from the vicinity and to ensure safe travel home.
 - The potential for contamination of the street environment through increased litter and other pollution of the streets by customers.

6. National Guidance

- 6.1 Guidance has been issued under Section 182 of The Licensing Act 2003, the latest version being issued in December 2023.

- 6.2 Para 2.21 of the Guidance states “The 2003 Act requires licensing authorities (following receipt of relevant representations) and responsible authorities, through representations, to make judgements about what constitutes public nuisance and what is necessary to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable, The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.”
- 6.3 Para 2.22 of the Guidance states “Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.”
- 6.4 Para 2.24 of the Guidance states “As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.”
- 6.5 Para 2.25 of the Guidance states “Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise.”
- 6.6 Para 2.26 of the Guidance states “Measures to control light pollution will also require careful thought. Bright lighting outside premises considered necessary to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, Licensing authorities and responsible authorities will need to balance these issues.”
- 6.7 Para 2.38 of the Guidance states “In the context of preventing public nuisance, it is again essential that conditions are focused on measures within the direct control of the licence holder or club. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, club or premises management cannot be justified and will not serve to promote the licensing objectives.”
- 6.8 Para 9.4 of the Guidance states “A representation will only be relevant if it is likely to effect the grant of the licence on the promotion of at least one of the licensing objectives.”
- 6.9 Para 10.6 of the Guidance states “The 2003 Act provides that where an operating schedule or club operating schedule has been submitted with an application and there have been no relevant representations made by responsible authorities or any other person, the licence or certificate must be granted subject only to such conditions as are consistent with the schedule accompanying the application and any mandatory conditions required under the 2003 Act.”

- 6.10 Para 10.8 of the Guidance states “The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises. This provision also applies to minor variations.”
- 6.11 Para 10.13 of the Guidance on proportionality states “The Act requires that Licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned. This rules out standardised conditions which ignore these individual aspects. It is important that conditions are proportionate and properly recognise significant differences between venues.”
- 6.12 Para 10.9 of the Guidance states “It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives.”

7. Licensing Comments

- 7.1 A plan of the location of the premises is attached **Appendix 2**.
- 7.2 The Committee must determine this application on its individual merits with a view to promoting the licensing objectives, that are:
- The prevention of crime and disorder;
 - Public safety;
 - The prevention of public nuisance; and
 - The protection of children from harm.
- 7.3 The Committee must have regard to all of the representations considered as relevant and weight the evidence as it sees fit. After it hears all of the relevant evidence it will then determine the application.

The Committee must determine this application having regard to its own licensing policy. The Committee must not arbitrarily deviate from its own policy. When it decides to do so, clear and cogent reasons must be provided in support of that decision.

The application must be determined on its individual merits and there is little substantive evidence submitted to show this application will adversely affect the prevention of public nuisance objective. Members should note that the Environmental Health Officer has not submitted any representation and would normally be relied on from a technical perspective and on an evidential basis where complaints have been made against a business.

In terms of representations generally, the statutory guidance makes clear that, in cases where the objection is borderline in terms of its relevance and strength, the benefit of the doubt “about any aspect of a representation should be given to the person making that representation.” The comments made by the objector are relevant to the consideration of the promotion of the licensing objectives, but there is little detail to support their assertions and so Members must consider what weight they are able to attach to the representation. The objector did not submit additional information to support their statement and the committee may wish to explore this further.

It should be noted that there has been an attempt at arranging mediation between the objector and the applicant. However, the objector did not wish to participate and wished the matter to be heard by Members.

The hearing regulations made under the 2003 Act prescribe that an application for a Premises Licence should be determined within 20 working days of the consultation period concluding where a relevant representation has been submitted. Due the combination of existing commitments for both Licensing Committee and other council committees that must be hosted by the local authority and the unavailability of the applicant and/ or their representative it was not possible to hold the hearing within that time.

The applicant had offered to defer the hearing date beyond the required 20 working days.

The regulations do allow the authority to extend a time limit in relation to hearings, and the authority has done so in this instance for the above reasons. The authority is reassured that no party to this application is prejudiced by this slight delay in determining the matter.

7.4 The Sub - Committee must have regard to the application, the representation received and the evidence it hears, in determining the application. The Sub - Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives which can include:

- Granting the application as requested;
- Modifying the conditions attached to the licence; or
- Rejecting all or part of the application

Background Papers

None applicable

Report Author

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