

PART A

Report to: Licensing Sub Committee
Date of meeting: Wednesday, 6 December 2023
Report of: Senior Licensing Officer
Title: Application for a new Premises Licence - ASDA Express, Sheepcot Service Station, North Orbital Road, Watford WD25 7LW

1.0 Summary

1.1 An application has been made by Euro Garages Ltd for a new premises licence for the premises at the Sheepcot Service Station, North Orbital Road, Watford WD25 7LW

1.2 During the consultation period, representations against this application were received from a local resident.

1.3 Members are reminded that representations are only relevant if they relate to one or more of the licensing objectives. The four licensing objectives are:

- the prevention of crime and disorder
- the prevention of public nuisance
- public safety
- the protection of children from harm

2.0 Risks

2.1	Nature of Risk	Consequence	Suggested Control Measures	Response <i>(Treat, tolerate, terminate, transfer)</i>	Risk Rating (the combination of severity and likelihood)
	Appeal against decision by applicant or objector	Decision overturned by the courts with potential of costs being awarded against council if decision is	Determination of application given with detailed reasons and after considering evidence	Treat	2

	not justified or legal	before the committee, the Council's licensing policy, statutory guidance, and legislation		
Judicial review of decision by applicant, objectors, or consultees	Negative perception of the council and its licensing system	Treat in accordance with the legislation, the statutory guidance, and the council's licensing policy, with both applicants and objectors being given fair chance to present their arguments to the committee.	Treat	1

3.0 Recommendations

- 3.1 That the Licensing Sub-Committee determines whether to grant the application (amended as appropriate for the promotion of the licensing objectives) as set out in the report.

Contact Officer:

For further information on this report please contact: Austen Young telephone: 01923 278474 email: austen.young@watford.gov.uk

Report approved by: Justine Hoy, Associate Director Housing and Wellbeing

4.0 **Application**

4.1 **Type of application**

4.2 Application for a new premises licence. The original application is attached at appendix 1.

4.3 **Description of premises**

4.4 The premises is a convenience store and petrol station on North Orbital Road, located on the land between the junction of North Orbital Road and Sheepcot Lane.

4.5 Under both Policy LP1 and Policy LP2A the premises is defined as an off-licence. However, it is acknowledged that the application does request the provision of late night refreshment as a licensable activity.

4.6 Under Policy LP2 the premises is defined as falling within a residential area. Within the immediate vicinity of the application premises are a number of residential properties and the car park for Woodside Leisure Park.

4.7 A map of the location of the premises is attached at appendix 2. This shows the location of the application premises.

4.8 **Licensable activities**

4.9 This application is requesting permission to provide the following licensable activities

Licensable activity	Requested
Plays	
Films	
Indoor sporting events	
Boxing or wrestling entertainment	
Live music	
Recorded music	
Performances of dance	
Entertainment of a similar description to live or recorded music, or dance	
Provision of late night refreshment	✓
Sale of alcohol for consumption on the premises	
Sale of alcohol for consumption off the premises	✓

4.10 **Licensable hours**

4.11 The hours proposed in this application are detailed in the following table:

	Provision of late night refreshment	Sale of Alcohol	Opening hours
Monday	23:00 - 05:00	00:00 - 00:00	00:00 - 00:00
Tuesday	23:00 - 05:00	00:00 - 00:00	00:00 - 00:00
Wednesday	23:00 - 05:00	00:00 - 00:00	00:00 - 00:00
Thursday	23:00 - 05:00	00:00 - 00:00	00:00 - 00:00
Friday	23:00 - 05:00	00:00 - 00:00	00:00 - 00:00
Saturday	23:00 - 05:00	00:00 - 00:00	00:00 - 00:00
Sunday	23:00 - 05:00	00:00 - 00:00	00:00 - 00:00

5.0 **Background information**

5.1 The following background information is known about the premises.

5.2 **Current licences held**

5.3 The premises is not currently licensed.

5.4 **Closing date for representations**

5.5 10 November 2023

5.6 **Public notice published in newspaper**

5.7 20 October 2023

5.8 **Visits and Enforcement action**

5.9 The committee have requested that we note the history of visits and enforcement actions. It is noted that the premises is not currently licensed.

5.10 There have been no visits or enforcement action taken against this premises.

5.11 It is noted that the representations mention that litter is an existing problem and the use of a bin shed is highlighted. The Environmental Health team confirm that complaints have been received against this premises with regards to litter but after monitoring the premises there was no evidence of an ongoing problem and the complaints were closed without the need for enforcement action. The last complaint was received in August 2022. Officers can confirm that Environmental Health did not object to the application.

6.0 Promotion of the licensing objectives

6.1 The operating schedule submitted by the applicant to describe the steps that they intend to take to promote the licensing objectives is included within the application form attached at appendix 1.

7.0 Representations

7.1 Responsible authorities

7.2 Representations were received from the Police acting as a responsible authority but the application was amended and conditions were agreed between the applicant and the Police which resulted in the Police withdrawing their representations.

7.3 Environmental Health did liaise with the applicant’s agents with regards to the litter controls to be in place at the premise. Upon receipt of this information they advised that on the basis of these control there would be no representations.

7.3 No other responsible authority submitted representations against this application or agreed any additional measures with the applicant during the application process.

7.4 Other relevant bodies

7.5 Representation have been received from a local resident, and their details can be found below

Name	Address	Representative Body (Yes/No)	Relevance to which licensing objective(s)
Tim Sorrell	Sheepcot Lane	No	Crime and disorder, public nuisance

7.6 These representations are attached at appendix 3.

7.7 As detailed later in the report, during the consultation period the Police did agree on a number of conditions to be attached to any premises licence granted as a result of this application. These conditions were shared with the resident who advised that these did not address their concerns and that their representation still stood.

8.0 Policy considerations

8.1 Licensing Act 2003

8.2 The following provisions of the Licensing Act 2003 apply to this application:

- Sections 17 and 18 (Application for premises licence)
Section 17 details the process which the applicant must have followed for the application to be considered valid. Section 18 describes the process by which an application for a premises licence is determined, including where relevant representations have been made as in this case.
- Section 176 (Prohibition of alcohol sales at service areas, garages etc)
Section 176 states 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. This section goes into further detail by defining excluded premises, explaining that premises are used as a garage if they are used for one or more of the following activities:
 - the retailing of petrol
 - the retailing of derv
 - the sale of motor vehicles, or
 - the maintenance of motor vehicles
- The Licensing Act 2003 (Hearings) Regulations 2005 (as amended)
These regulations detail how hearings should be conducted to determine applications submitted under the Licensing Act

8.3 Statutory guidance

8.4 The following provisions of the Secretary of State's guidance (August 2023) apply to, and are relevant to, this application:

- Paragraphs 2.24 & 2.25
Paragraph 2.24 states that where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods.
- Paragraph 2.26
This paragraph explains that beyond the immediate area surrounding a premises, individual who engage in anti-social behaviour are responsible for their own actions and should be held accountable accordingly. This paragraph does state that it would be reasonable for a licensing authority to impose conditions regarding signage to be placed at exits or smoking areas to encourage patrons to be quiet and respect the rights of people living nearby to a peaceful night.

- Paragraphs 5.22 – 5.24
 These paragraphs explain the impact of section 176 of the Act upon licences for motorway service stations and petrol stations. The guidance explains that while it is still for the licensing authority to decide on the basis of the licensing objectives whether it is appropriate for the premises to be granted a licence, where a relevant representation has been received the licensing authority must decide whether or not the premises are used primarily as a garage.
- Paragraphs 8.41 – 8.49
 These paragraphs explain how steps should be taken to promote the licensing objectives. It is for the Sub-Committee to decide in the light of this guidance whether the measures offered by the applicant are appropriate to promote the licensing objectives. It is equally important to use the same measures when looking at any steps requested by a party making representations against an application.
- Paragraphs 9.31 – 9.41
 These paragraphs explain that hearings should be focussed on the steps considered appropriate to the promotion of the licensing objectives, as well as how appropriate weight must be attributed to the steps to promote the licensing objectives, the representations presented by all parties, the statutory guidance, and the licensing authority's statement of licensing policy.
- Paragraphs 9.42 – 9.44
 These paragraphs explain that when determining applications, the authority's determination should be evidence-based, as well as how to assess if a step is 'appropriate' for the promotion of the licensing objectives.
- Chapter 10
 This chapter looks at best practice in relation to conditions that may be attached to a premises licence should it be believed that such conditions are appropriate to promote the licensing objectives. Any additional conditions requested by any party should be considered with reference to this chapter.
- Paragraph 14.19
 This paragraph explains that the 'need' for a premises is not a matter for the licensing authority, and instead it is expected that the commercial demand for licensed premises should be a matter for the local planning authority and the market.

8.5 **Statement of licensing policy**

8.6 The following paragraphs of the licensing authority's statement of licensing policy (April 2021 - November 2023) apply to this application being the relevant policy for the application date:

- Policy LP1 – Premises definitions
Under this policy, officers would recommend that this premises is defined as an off-licence. It is recognised that the premises is also requesting provision for late night refreshment but this operation is not a typical late night take-away. Due to the limited operational hours of late night refreshment and the fact that the application is requesting alcohol sales for 24 hours a day, it would be more appropriate to classify the business as an off-licence.
- Policy LP2 – Location and operation of premises
This policy sets out the approach to licensing premises when relevant representations are received, notwithstanding that each application is considered on its own merits. Outside of the town centre, this policy recommends that off-licences will generally be allowed alcohol sales in accordance with the normal opening hours of the shop. The application confirms that the premises is seeking permission to both open and sell alcohol 24 hours a day.
- Policy LP2A – Petrol filling stations
This policy sets out the approach to determining whether the primary use of a premises which sells petrol, derv, vehicles or offers vehicle maintenance are primarily used as a garage under section 176 of the Licensing Act.

In determining applications for garages or petrol filling stations as in this case, the council requires applicants to provide sales and footfall data over the previous two years to show that petrol or derv sales are not the primary use of the premises. Where such information is not available, the Sub-Committee may consider imposing a condition to require the submission of such data for two years to confirm the use.

While not specifically mentioned in the policy, Members are reminded when considering data for the previous two years this trading period would fall within the period of the Covid-19 pandemic.

- Policy LP6 – Prevention of crime and disorder
Under this policy the committee will consider any appropriate measures to deal with the potential for crime and disorder where relevant

representations have been received, and this policy highlights areas of particular concern.

- Policy LP8 – Prevention of public nuisance
Under this policy the committee will consider any necessary measures to deal with the potential for public nuisance and/or antisocial behaviour where relevant representations have been received. This policy specifically highlights that the Sub-Committee will consider the steps taken to identify food and drink packaging from the premises and the steps proposed to reduce litter as far as is reasonably practicable, and the question of whether the premises would lead to increased refuse storage or disposal problems, or additional litter, in the vicinity of the premises.
- Policy LP11 – Representations against applications
This policy recommends the type of information that should be included in a representation. It also explains how representations will be dealt with, including rejecting invalid representations and reporting on them to a Sub-Committee.

- 8.7 Officers also wish to clarify that within the Borough of Watford there are no designated locations where premises offering late night refreshment are exempt from the requirement to hold a premises licence. A premises licence is therefore required for this business to authorise the provision of late night refreshment.
- 8.8 The Sub-Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in the Borough.
- 8.9 The Sub-Committee is reminded that the Human Rights Act 1998 guarantees the right to a fair hearing for all parties in the determination of their civil rights. The Act also provides for the protection of property, which may include licences in existence, and the protection of private and family life.
- 9.0 **Conditions**
- 9.1 Members will be aware that an operating schedule forms part of the licensing process. This document outlines what activities are proposed, the opening hours, and how the activities will be managed particularly in respect of the licensing objectives.
- 9.2 The most critical part of the operating schedule is the steps taken by the applicant to promote the four licensing objectives. Applicants are always reminded to take careful consideration as to what is entered in this section as whatever is proposed will be translated as conditions on the licence.

9.3 Applicants should give consideration to the local area and reflect this in their application. It should demonstrate an awareness of the local community, local crime and disorder issues, and the local environment.

9.4 The applicant's original operating schedule for this application can be found in their application attached at appendix 1.

9.5 **Conditions agreed with responsible authorities**

9.6 The following conditions were agreed between the applicant and the Police during the consultation period and were accepted as amendments to the application and the operating schedule:

1. All alcohol sales shall be in sealed containers only and shall not be consumed on the premises.
2. The premises shall install and maintain a CCTV system. All entry, exit and point of sale areas shall be covered by the cameras, and the images shall enable frontal identification of every person entering in any light condition. The system shall continually record whilst the premises is open for licensable activities and during all times when staff and customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Recordings shall be made available to Police or an authorised officer of the licensing authority upon request throughout the preceding 31 day period, providing that such requests are in connection with the prevention or detection of crime.
3. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open for licensable activities. This staff member shall be able to show Police or an authorised officer of the licensing authority data or footage upon request.
4. All faults/defects in the CCTV system shall be repaired within 3 days after which time, if the system is still inoperative no licensable activities shall take place without the agreement of the Police until the fault is rectified.
5. No super-strength beers, lagers or ciders of 6.5% ABV (alcohol by volume) or above shall be sold at the premises. For the avoidance of doubt, this does not apply to premium priced/craft products.
6. No sales of miniature bottles (25cl or less) of spirits of any kind shall be permitted save for pre-packaged gift packs which may contain a miniature.

7. There shall be no self-service of spirits on the premises.
 8. A log (which may be electronically recorded) shall be kept detailing all refused sales of alcohol. The log should include the date and time of the refused sale and the name of the member of staff who refused the sale. The log shall be available for inspection at the premises by the Police or an authorised officer of the licensing authority at all times whilst the premises are open.
 9. In addition to any other training, the premises licence holder shall ensure all staff are trained to prevent underage sales, to maintain the refusals book, enter sales correctly on the tills so the prompts show when appropriate and monitor staff to ensure their training is put into practice.
 10. An incident log shall be kept at the premises for at least 12 months, and made available on request to an authorised officer of the local authority or the Police, which will record the following:
 - (a) all crimes and incidents
 - (b) any failures or faults in the CCTV system
 - (c) any complaints received
 - (d) any refusals of alcohol
 11. The premises shall implement a Challenge 25 policy whereby all customers who appear to be under 25 must produce photographic identification in the form of a passport, driving licence or Proof of Age Scheme (PASS) approved identification or any other Home Office approved ID before being allowed to purchase alcohol.
 12. Clearly visible signage is to be displayed at the entrances and at points of sale indicating it is illegal to sell alcohol to people under the age of 18.
 13. The entrance door to the shop shall be closed to customers between the hours of 00:00 and 05:00. Any sales between these hours will be made through the night pay window.
- 9.7 No other conditions or additional steps were agreed with any other responsible authority.
- 9.8 **Conditions proposed by other objectors**
- 9.9 There were no conditions proposed by the local resident.

9.10 **Conditions consistent with the operating schedule**

9.11 Officers have not identified any further conditions which would be consistent with the original operating schedule, although the Police conditions detailed above do build upon some of the steps proposed in the original operating schedule, for example the provision of CCTV and the use of Challenge 25.

9.12 **Pool of Model Conditions**

9.13 In addition to any conditions proposed by the responsible authorities or objectors, the licensing authority also has its own pool of model conditions that may help mitigate the concerns raised in the representations.

9.14 The following condition, based upon a condition in the pool of model conditions but modified to take into account the specific layout and location of the premises, is proposed as being appropriate for the promotion of the licensing objectives and to mitigate the concerns raised in the representations:

1. The petrol station forecourt from the building line to the entrance slipways to the forecourt including the gutter/channel at its junction with the entrance slipways, shall be swept and or washed to keep it free from all litter and other deposits occurring as part of the business. This is to be done at least once daily and a log of cleaning kept for 3 months. Any litter and sweepings collected must be stored and disposed of as trade waste.

9.15 This does not restrict the Sub-Committee's power to attach conditions from the pool (amended or otherwise) if they consider that they are appropriate, proportionate, justifiable and within the applicant's power to comply with. It also does not restrict the Sub-Committee's power to amend any proposed conditions if an amended condition would be more appropriate to address the concerns raised against this application.

9.16 A draft premises licence which reflects this application and the conditions which are proposed in the preceding paragraphs is attached at appendix 4.

10.0 **Officers' observations**

10.1 As relevant representations have been received, and which have not been withdrawn, the Sub-Committee acting on behalf of the licensing authority must make a determination on this application.

10.2 Officers can advise that mediation has been offered in this case as is standard practice, and any updates with regards to this mediation shall be provided to Members as appropriate.

- 10.3 In correspondence with the objector, the question of need was raised. Members are reminded that the statutory guidance does go into detail on the difference between the need for premises and the cumulative impact of a number of premises within a set area. This premises does not fall under a cumulative impact policy and therefore the cumulative impact of nearby premises is not up for consideration. With regards to the 'need' for premises, this is not a matter for the licensing authority to determine. Members are only required to consider the application before them on its own merits and determine the application.
- 10.4 The representations do concern the impact of customers, particularly with regards to litter. As highlighted earlier in this report, the statutory guidance does state that beyond the immediate area surrounding the premises, individuals are accountable for their own actions. In proposing relevant conditions for this application, officers have proposed conditions within the vicinity of the premises. In doing so, officers have set a defined collection area, being limited to the petrol station forecourt which will fall under the control of staff of the premises. Conditions should clearly set out what is expected from licence holders and their staff and this aim can be achieved by defining the litter collection area. The proposed extent has also been put forward taking into account the layout and use of the surrounding area and how the premises would be responsible for the grounds of their business.
- 10.5 As stated earlier in the report, section 176 of the Licensing Act is relevant to this application in that the premises operates as a petrol station. Officers have requested relevant data with regards to the use of the premises in accordance with our policy in order to establish whether the primary use of the premises is as a garage as defined by the Licensing Act. At the time of writing this report, full data has not been received but the applicant's agents have acknowledged receipt of the request from officers.
- 10.6 It must be recognised that it is possible for a petrol filling station to hold a premises licence or to be granted a premises licence. In accordance with Policy LP2A and the Licensing Act, should a licence be granted and the use of the premises later changes so that it is considered to be a garage under the Licensing Act 2003, then the premises licence shall have no effect and may not be used to authorise the supply of alcohol until such time as the premises is no longer deemed to be a garage.
- 10.7 The licensing authority is mindful that the data required to establish the use of the premises is sensitive business information concerning sales and footfall. Should any discussions be needed in respect of this data, then it is recommended that the Sub-Committee should consider excluding any press and/or public from these discussions under Paragraph 3, Schedule 12A, of the Local Government Act 1972 (Information relating to the financial or business affairs of any particular person (including the authority holding that information)).

- 10.8 Members are reminded that both applicants and objectors have the right to expand upon their original submissions, but should not introduce new evidence unless provided and circulated before the hearing, or introduced at the hearing with the agreement of all parties present.
- 10.9 The officers' observations and the comments regarding the representations are in no way meant to bind Members. They are for guidance only and Members may attach whatever weight they see fit.
- 10.10 Members are also to attach whatever weight they see fit to both the submissions of the applicant, and to the submissions of the objectors, when considering this application.
- 10.11 The Sub-Committee is reminded that it has a duty to "have regard" to the licensing policy but is not bound by it. However, should Members wish to depart from the policy then detailed reasons for this must be given as part of any decision.
- 10.12 In determining this application, the Sub-Committee must have regard to the representations and take such steps as it considers appropriate for the promotion of licensing objectives. The steps are:
- (a) grant the application in full.
 - (b) modify the conditions of the licence volunteered by the applicant in the operating schedule, by altering or omitting or adding them.
 - (c) reject the whole or part of the application.
- 10.13 In determining the application, in accordance with the statutory guidance, Members should also consider determining whether the premises is used primarily as a garage under s176 of the Licensing Act 2003.
- 10.14 It is important that a licensing authority should give reasons for its decision in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal

Appendices

Appendix 1 – Application

Appendix 2 – Location plan

Appendix 3 – Sorrell representations

Appendix 4 – Draft premises licence

Background Papers

The following background papers were used in the preparation of this report. If you wish to inspect or take copies of the background papers, please contact the officer named on

the front page of the report.

Licensing Act 2003

Amended guidance issued under section 182 of the Licensing Act 2003 (August 2023)

Licensing Act (Hearings) Regulations 2005

Watford Borough Council Licensing Policy (April 2021 - November 2023)

Watford Borough Council Pool of Model Conditions (January 2018)