

SUBJECT:	APPLICATION FOR A PREMISES LICENCE MORRISONS PETROL FILLING STATION, TRITTON ROAD, LINCOLN, LN6 7QL
DIRECTORATE:	COMMUNITIES & ENVIRONMENT
REPORT BY:	IAN CULLEN, LICENSING OFFICER

1. Purpose of Report

- 1.1 To determine an application for a premises licence and consider representations made in respect of premises known as Morrisons Petrol Filling Station, Tritton Road, Lincoln, LN6 7QL

2. The Application

- 2.1 Under the provisions of section 17 of the Licensing Act 2003 on the 14th June 2016, solicitors acting for WM Morrison Supermarkets Plc, made an application for a premises licence for premises known as Morrisons Petrol Filling Station, Tritton Road, Lincoln, LN6 7QL. A copy of the application can be seen at Appendix A.
- 2.2 The application seeks to authorise the sale of alcohol for consumption off the premises for 24 hours a day, seven days a week and be open to the public throughout that time.
- 2.3 The application also seeks to authorise the provision of late night refreshment from 2300 to 0500 seven days a week.

3 Promotion of Licensing Objectives

- 3.1 In submitting their application, the applicant is required to describe any steps intended to be taken in order to promote the following 4 licensing objectives:
- The Prevention of Crime and Disorder
 - Prevention of Public Nuisance and
 - Public Safety
 - The Protection of Children from Harm
- 3.2 Section M of the application found at Appendix A describes the steps that the applicant intends to take to promote the licensing objectives.

4. Relevant Representations – Responsible Authorities

- 4.1 On the 11th July 2016 the Chief Officer of Police for Lincolnshire has made a representation objecting to the grant of the licence stating that the licensing objectives of:
Prevention of crime and disorder;
Public safety; and

Prevention of public nuisance

Were at risk.

A copy of the representation and supporting documents can be seen at Appendix B.

5. Relevant Representations - Other persons

5.1 On the 29th June 2016 a representation was received from Michael Hayes-Cowley on behalf of APS Properties objecting to the grant of the licence stating that the licensing objectives of:

Prevention of crime and disorder; and

Prevention of public nuisance

Were at risk.

Full details of the representation can be seen at Appendix C.

5.2 On the 11th July 2016 a representation was received from Paul Rowlinson, Operational Compliance Director for Vero Group objecting to the grant of the licence stating that the licensing objectives of:

Prevention of crime and disorder;

Public Safety; and

Prevention of public nuisance.

Were at risk.

Full details of the representation can be seen at Appendix D.

5.3 On the 11th July 2016 a representation was received from University of Lincoln Students' Union objecting to the grant of the licence stating that the licensing objectives of:

Prevention of crime and disorder;

Public Safety; and

Prevention of public nuisance.

Were at risk.

Full details of the representation can be seen at Appendix E.

6. Considerations

6.1 Section 176 of Licensing Act 2003

6.1.1 The police representation makes reference to section 176 of the Licensing Act 2003.

6.1.2 A document of information relating to section 176 can be found at Appendix F.

6.1.3 This document is submitted by the Licensing Officer as a guidance for all the parties regarding the issues relating to the applicability of Section 176 to these proceedings. It is not intended to represent a legal opinion.

6.1.4 Following consideration of the information provided at Appendix F and any further information that may be provided at the committee hearing the sub-committee may wish to determine the applicability of Section 176 before proceeding to address the other substantive issues.

6.2 Section 182 Guidance and Licensing Authority Policy

- 6.2.1 The duty of the Licensing Authority is to promote the licensing objectives having regard to the Act and Regulations made thereunder, Guidance issued under S182 of the Act by the Home Office and the Council's own Licensing Policy.
- 6.2.2 Copies of the Statutory Guidance issued by the Home Office, known as Section 182 guidance and a copy of the Council's Statement of Licensing Policy will be available for consultation at the hearing.
- 6.2.3 The Council's policy requires the Sub-Committee to determine applications on their own merits.
- 6.2.4 The Sub-Committee must consider the points raised in the representations at Appendices B to E, on the likely effect of the grant of this licence on the licensing objectives identified within them. The onus falls upon those making representations to show that such consequences, based on the balance of probabilities (i.e. more probable than not), are a likely effect of the grant of a licence.
- 6.2.5 S182 paragraph 8.33
In completing an operating schedule, applicants are expected to have regard to the statement of licensing policy for their area. They must also be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives, and to demonstrate knowledge of their local area when describing the steps they propose to take to promote the licensing objectives. Licensing authorities and responsible authorities are expected to publish information about what is meant by the promotion of the licensing objectives and to ensure that applicants can readily access advice about these matters. However, applicants are also expected to undertake their own enquiries about the area in which the premises are situated to inform the content of the application.
- 6.2.6 S182 paragraph 8.34
Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives, that they understand:
- *the layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children may congregate;*
 - *any risk posed to the local area by the applicants' proposed licensable activities; and*
 - *any local initiatives (for example, local crime reduction initiatives or voluntary schemes including local taxi-marshalling schemes, street pastors and other schemes) which may help to mitigate potential risks.*
- 6.2.7 Paragraph 4.2 of the Council's Licensing Policy states:
Shops, stores and supermarkets should generally be permitted to sell alcohol for consumption off the premises during the normal hours they intend to open for shopping purposes. However, in the case of individual shops that are known to be or are in an area which is known to be a focus of disorder and disturbance

then, subject to receiving relevant representations, a limitation on licensing hours may be appropriate.

- 6.2.8 Paragraph 4.3 of the Council's Licensing Policy states:
The Licensing Authority will deal with the issue of licensing hours on the individual merits of each application. When issuing a licence or certificate, subject to receiving relevant representations, it may be necessary to impose stricter conditions with regard to noise control and/or limitations to the opening hours on premises which are situated in residential or sensitive areas.
- 6.2.9 S182 paragraph 2.1 states:
Licensing authorities should look to the police as the main source of advice on crime and disorder.
- 6.2.10 S182 paragraph 9.12 states:
In their role as a responsible authority, the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective. The police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective, but may also be able to make relevant representations with regard to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.
- 6.2.11 Paragraphs 1.8 and 2.6 of the Council's Licensing Policy states:
The Licensing Authority cannot attach conditions to licences, certificates or provisional statements unless they are mandatory, volunteered by the applicant or imposed by it following a hearing resulting from the receipt of relevant representations.
The Licensing Authority does not intended to duplicate existing legislation and regulatory regimes that already place obligations on employers and operators (for example, The Health and Safety (First Aid) Regulations 1981 and the Regulatory Reform (Fire Safety) Order 2005) and it will therefore not attach conditions to licences if they are already adequately covered by other legislation.
- 6.2.12 The only conditions which should be imposed on a premises licence (as opposed to being volunteered on the operating schedule) are those which the Sub-Committee consider appropriate and proportionate for the promotion of the licensing objectives. Any conditions should be tailored to the individual characteristics and activities of the premises and determined on a case to case basis. (See paragraph 10.10 of S182 Guidance).
- 6.2.13 Such conditions should be expressed in unequivocal and unambiguous terms in order that they are understood and not subject to legal challenge.
- 6.2.14 Lord Justice Scott Baker in the case of *Crawley Borough Council v Stuart*

Attenborough and Angela Attenborough said, *“Let me say a brief word in general terms. It is important that the terms of a premises licence and any conditions attached to it should be clear; not just clear to those having specialized knowledge of licensing, such as the local authority or the manager of the premises, but also to the independent bystander such as neighbours, who may have no knowledge of licensing at all. “*

6.3 Human Rights Act

6.3.1 Article 6 – right to a fair hearing

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”

The right to engage in commercial activities is a civil right –

Kaplan v United Kingdom 1980

Pudas v Sweden 1987

6.3.2 Article 8 – right to respect for private and family life

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Removal or restriction of a licence may affect a person’s private life.

6.3.3 Article 1, Protocol 1 – peaceful enjoyment of possessions

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

The right to engage in commercial activities under the benefit of a licence or registration is a possession

Tre Traktor Aktiebolag v Sweden 1989

6.3.4 The holding of this hearing where the applicant and those making representations can give written or oral evidence either personally or through a representative ensures that the requirements of the Human Rights Act has been complied with.

6.4 Other Considerations

- 6.4.1 The Sub-committee is charged with furthering the objectives of the legislation in the decisions that it makes. It is not bound by the civil or criminal procedure rules. It should consider the material which has been placed before it, question any statement made either in favour of or against the application by way of fact finding with a critical mind and then make a decision which appears to it to be logical, sensible and appropriate to advance the policy of the legislation in its area.
- 6.4.2 That decision must be based on evidence, but that means no more than it must be based on material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant.
- 6.4.3 The Sub-Committee should expect original evidence to be put before it by any party. It is not enough for the Sub-Committee simply to rely upon material submitted; it must apply a critical mind to the quality and reliability of that material for itself.
- 6.4.4 The weight the Sub-committee put on such material is for it to decide.
- 6.4.5 The Sub-committee is entitled to, and indeed obliged to, consider any relevant material that appears useful in coming to a decision, including its own local knowledge.
- 6.4.6 If the Sub-Committee is minded to impose further conditions or modify conditions offered in the operating schedule then any such conditions should be achievable, realistic, appropriate, proportionate and within the control of the licence holder. They should be based on a proper, common sense consideration of the risks to the licensing objectives identified in the application and representations and what can realistically be done to mitigate them.
- 6.4.7 Notices of this hearing were forwarded to all parties on the 14th July 2016.

7. Options

- 7.1 The Sub-Committee must, having regard to the application and representations, take such of the steps mentioned below as it considers appropriate, rational and reasonable for the promotion of the licensing objectives.
- 7.2 The following options are available to the Sub-Committee:
- Grant the application as applied for, with no additional conditions;
 - Grant the application with additional conditions or modified conditions attached to alleviate the concerns raised through the representation. (NB Conditions cannot be attached with respect to any part of the application on which no representation has been received.);
 - To partially grant the application in respect of the permitted activities and hours of the permitted activities;
 - Refuse the application.

- 7.3 The Sub-Committee is required to give reasons for its decision. Such reasons need to be clear and include an explanation of why it has reached its decision including what it relied on to do so (e.g. what evidence was accepted, and what evidence was rejected, and why).
- 7.4 If the Sub-Committee refuses the application, it must give reasons why it refused and why conditions would not have been effective in this instance.

8. List of associated papers

- 8.1 Appendix A: Application for premises licence
Appendix B: Representation from Lincolnshire Police
Appendix C: Representation from APS Properties
Appendix D: Representation from Vero Group
Appendix E: Representation from University of Lincoln Students' Union
Appendix F: Information relating to S176 of the Licensing Act 2003

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