

Licensing Sub Committee

21 November 2023

New Premises Licence Application – Asda Express, Winterborne Zelston

For Decision

Portfolio Holder: Cllr L Beddow, Culture and Communities

Local Councillor(s): Cllr E Parker

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Report Status: Public

Brief Summary: An application has been made for a new premises licence for Asda Express on the A31 at the Red Post Garage site in Winterborne Zelston. The application has been out to public consultation and has attracted relevant representations. A Licensing Sub Committee must consider the application and representations at a public hearing.

Recommendation: The Sub-Committee determines the application in the light of written and oral evidence and resolves to take such steps as it considers appropriate and proportionate for the promotion of the licensing objectives of: -

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

The steps that the Sub-Committee may take are: -

- a) Grant the licence subject to such conditions as the authority considers appropriate for the promotion of the licensing objectives, and the mandatory conditions.
- b) Exclude from the scope of the licence any of the licensable activities to which the application relates.
- c) Refuse to specify a person in the licence as the designated premises supervisor, or
- d) Reject the application.

Reason for Recommendation: The Sub-Committee must consider the oral submissions and information given at the hearing before reaching a decision.

1. Background

- 1.1 Section 4 of the Licensing Act 2003 sets out the duties of the Licensing Authority, it sets out that a Council's licensing functions must be carried out with a view to promoting the four licensing objectives of:
- (a) the prevention of crime and disorder;
 - (b) public safety;
 - (c) the prevention of public nuisance; and
 - (d) the protection of children from harm.
- 1.2 All decisions are made with due regard to the Licensing Act 2003 (the Act), the Revised Guidance issued under Section 182 of the Licensing Act 2003 (the Guidance) and the Dorset Council Statement of Licensing Policy (the Policy).

2. Details of the application

- 2.1 Euro Garages Limited has applied for a new licence for the Asda Express Store at the Red Post Garage site on the A31 at Winterborne Zelston. The application and plan of the premises is attached at Appendix 1.

- 2.2 The application was for the following hours: -

Late Night Refreshment

Every day 2300 – 0500

The supply of alcohol

Every day 0000 – 2400

Opening Hours

Every day 0000 – 2400

- 2.3 The operating schedule contains the steps which would be converted into conditions on a licence if it were to be granted, they include: -

Staff training
No miniatures on sale
All spirits stored behind the counter
CCTV
A challenge 25 proof of age policy.

A list of the full conditions from the operating schedule (and the one agreed with the police, see paragraph 3.2) is attached at Appendix 2.

- 2.4 During the course of the public consultation the applicants offered to reduce the hours sought due to the concerns raised by the Parish Council and residents. The reduced hours they offered are: -

Late Night Refreshment

Every day 2300 – 2400

The supply of alcohol

Every day 0600 – 2400

- 2.5 The applicants have also clarified that the provision of Late-Night Refreshment relates solely to the provision of hot coffee from a vending machine, and that they would be happy to have a condition reflecting that if a licence were to be granted.

3 Representations from Responsible Authorities

- 3.1 Section 13 of the Licensing Act contains the list of Responsible Authorities who must be consulted on each application. In accordance with this section Dorset Police, Dorset and Wiltshire Fire Service, Public Health Dorset, the Immigration Authority, Dorset Council Trading Standards, Dorset Council Children's Services, Dorset Council Planning, Dorset Council Licensing, Dorset Council Environmental Protection and Dorset Council Health and Safety have all been consulted.

- 3.2 Dorset Police have requested that a condition would be added to any licence if it is granted: -

Between the hours of 22.00 and 06.00, the entrance door to the premises will be locked closed and customers prevented access to the premises with any sales taking place through the night pay window.

The applicant has advised that they have agreed to this condition should any licence be granted. With the change to the hours for the sale of alcohol and late-night refreshment the 06:00 should be amended to Midnight, if a licence is granted.

- 3.3 No other comments have been received from the remaining Responsible Authorities.

4 Representations from Other Persons

- 4.1 The Licensing Act 2003 Section 182 Guidance (the Guidance) sets out at 8.13 the role of "other persons":

"As well as responsible authorities, any other person can play a role in a number of licensing processes under the 2003 Act. This includes any individual, body or business entitled to make representations to licensing authorities in relation to applications for the grant, variation, minor variation or review of premises licences and club premises certificates, regardless of their geographic proximity to the premises. In addition, these persons may themselves seek a review of a premises licence. Any representations made by these persons must be 'relevant', in that the representation relates to one or more of the licensing objectives. It must also not be considered by the licensing authority to be frivolous or vexatious. In the case of applications for reviews, there is an additional requirement that the grounds for the review should not be considered by the licensing authority to be repetitious. Chapter 9 of this guidance (paragraphs 9.4 to 9.10) provides more detail on the definition of relevant, frivolous and vexatious representations.

4.2 The Guidance states at paragraph 9.4 what a “relevant” representation is; -

“A representation is “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives.”

4.3 Chapter 2 of the Guidance Licensing set out what can be considered under each of the four licensing objectives. The full chapter is attached at Appendix 3.

4.4 There are ten representations that contain some relevant objections relating to the four licensing objectives, these would include those representations citing increases to noise, litter and ASB, if it is a direct result of the activities being applied for, which in this case is the off sales of alcohol and the provision of coffee from a machine within the premises. Full copies of the representations can be found at Appendix 4, together with the response from the Licensing Officers in red and any further comments that were received.

4.5 The representations also contain a number of comments that cannot be considered relevant as they either do not relate to the application site or do not fall within the four licensing objectives. This would apply to comments that relate to a parking area which is not included in this application, although it is on the same site behind a vacant premises.

4.6 Any comments relating to the potential of a fast-food establishment coming onto the site and the noise caused by young people being attracted to that site, cannot be considered with this application, they would be considered when an application for that premises was received.

4.7 Matters relating to road safety would have been considered during the planning process, where Highways consider aspects relating to entrances and exit from the site and additional traffic. The Public Safety objective relates to the safety of people using the premises, see paragraph 2.7 of the Guidance.

4.8 Whether there is a “need” for the premises is a planning matter which would have been taken into consideration during that process, but it does not fall into one of the licensing objectives so cannot be considered when the licence is being determined.

4.9 The responsibility for drink driving rests with individuals, who the Guidance states are not the responsibility of the operator once they are beyond the premises. See paragraph 6.2 of this report.

5 History of the Site

- 5.1 There has previously been a shop and garage on this site with an alcohol licence being in place to sell alcohol from 0900 to 2300 every day from December 2006 to January 2020 when that licence was surrendered.

6 Statutory Guidance

- 6.1 The full Guidance can be found on the [Government Website](#). Officers have identified the following paragraphs as having particular significance to this application. Paragraphs 1.2-1.5 of the Guidance states; -

The legislation provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken.

The licensing objectives are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

Each objective is of equal importance. There are no other statutory licensing objectives, so that the promotion of the four objectives is a paramount consideration at all times.

However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:

- protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;
- giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;
- recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises;
- providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and
- encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them

- 6.2 Paragraph 1.16 of the Guidance states: -

Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions:

- must be appropriate for the promotion of the licensing objectives;

- must be precise and enforceable;
- must be unambiguous and clear in what they intend to achieve;
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- must be tailored to the individual type, location and characteristics of the premises and events concerned;
- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- should not replicate offences set out in the 2003 Act or other legislation;
- should be proportionate, justifiable and be capable of being met;
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format.

6.3 Paragraphs 9.42 to 9.44 of the Guidance sets how the Licensing Authority should decide what actions are appropriate.

Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination."

7. Dorset Council Policy

7.1 The Council adopted a Statement of Licensing Policy on 1 February 2021 that sets out how applications will be dealt with. The full Policy can be found on the [Council's website](#).

7.2 Officers have identified the following paragraphs as having particular relevance to this application. Paragraph 4.12 of the Policy states: -

The public safety objective is concerned with the physical safety of people using the premises. Public safety includes safety of performers appearing at any premises.

7.3 Paragraph 4.25 of the policy states: -

The council recognises that it is necessary to balance the rights of local residents, businesses and others with those wishing to provide licensable activities, and those who wish to use such facilities.

7.4 Paragraph 4.26 of the Policy states: -

Ultimately if it is necessary for the prevention of public nuisance where conditions do not adequately address the issues an application can be refused.

7.5 Paragraph 5.1 of the Policy states: -

In determining a licensing application the overriding principle will be that each application will be determined on its own merits, having regard to the need to promote the four licensing objectives and taking into account this licensing policy and the guidance issued under Section 182 by the Secretary of State. Where it is necessary to depart from the guidance or this policy the council will give clear and cogent reasons for doing so.

7.6 Paragraph 5.17 of the Policy states: -

When determining any application where relevant representations are made, the council will consider it in the light of the four licensing objectives and in order to support a number of other key aims and purposes as set out in this policy. The requirement to promote the licensing objectives will be the paramount consideration. The council will focus upon the impact of the activities taking place on members of the public living, working or engaged in normal activity near the premises. Where relevant representations are made in relation to a premises licence, club premises certificate or temporary event notice the following factors will normally be taken into account when the council is looking at the impact of the activities concerned:

- The style of operation, the numbers of customers and customer profile likely to attend the premises.
- The location of the premises and the proximity of noise sensitive properties
- The proposed hours of operation
- Any proposed methods for the dispersal of customers

- The scope for mitigating any impact.
- The extent to which the applicant has offered conditions to mitigate the impact.
- How often the activity occurs.

7.7 Paragraph 6.13 of the Policy states: -

As a general rule, shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at all times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

7.8 Paragraph 7.5 of the Policy states: -

Once away from the licensed premises, a minority of customers will behave badly. Other mechanisms for addressing such concerns may be more appropriate than cumulative impact or may work alongside licensing policy.

7 Financial Implications

Any decision of the Sub Committee could lead to an appeal by any of the parties involved that could incur costs.

8 Natural Environment, Climate & Ecology Implications

None.

9 Well-being and Health Implications

None.

10 Other Implications

None

11 Risk Assessment

HAVING CONSIDERED: the risks associated with this decision; the level of risk has been identified as:

Current Risk: Low

Residual Risk: Low

12 Equalities Impact Assessment

Not applicable

13 Appendices

Appendix 1 – Application Form and Plan

Appendix 2 – Conditions in the operating schedule and those agreed with Responsible Authorities

Appendix 3 – Chapter 2 of the Guidance

Appendix 4 – Representation from Other Parties

14 Background Papers

[Licensing Act 2003](#)

[Home Office Guidance issued under Section 182 of the Licensing Act 2003](#)

[Dorset Council Statement of Licensing Policy 2021](#)