



LICENSING AND GAMBLING SUB COMMITTEE 22ND JANUARY 2024

SUBJECT: LICENSING ACT 2003 -DETERMINATION OF PREMISES
LICENCE APPLICATION

REPORT BY: LEE MORGAN LICENSING MANAGER

1. Application Details –

<u>Applicant</u>	<u>Premises</u>	<u>Application Type</u>
SS Enterprise Store Ltd Company No 12334292	25 Bryn Road, Cefn Fforest, Blackwood NP12 3LZ	Grant of Premises licence

1.1 Application for Grant of a New Premises Licence - Licensing Act 2003

An application has been submitted to apply for a new premises licence for the above premises. The proposed application for consideration is set out in 1.3 of this report.

The applicant has provided the following description of the premises, '*The Premises is the Stonehouse Public House currently being converted into a convenience store serving the residential area at the corner of Bryn Road and Pwllglas Road.*'

1.2 Site Plan/Photographs

The plan of the licensed area is reproduced as **Appendix 1**.

An aerial plan of the location is reproduced as **Appendix 2**.

Photographs of location are reproduced as **Appendix 3**.

1.3 Proposed Trading Times and Licensable Activity

The application for the grant of a Premises Licence seeks to permit the following Licensable Activities: -

- **Supply of Alcohol (Off Sales only)**

Monday - Sunday 08.00 – 23.00hrs

- 1.3.1** The following steps have been volunteered by the applicant as part of the Operating Schedule, to promote the Licensing Objectives, and are reproduced directly from the application: -

In making this application, we have taken into account the Guidance issued under the Licensing Act 2003 and the Caerphilly County Borough Council. Statement of Licensing Policy January 1st 2021. As a consequence of all this, we are applying with a raft of effective conditions in order to promote the Licensing Objectives.

1) CCTV shall be in use at the premises.

(i) Where a CCTV system is to be installed, extended or replaced, it shall be to an appropriate standard as agreed with the Licensing Authority in consultation with the Police. Where a CCTV system is to be installed, it shall be fully operational by opening date.

(ii) The CCTV equipment shall be maintained in good working order and continually record when licensable activity takes place and for a period of two hours afterwards. The system shall also record clear images permitting the identification of individuals.

(iii) The premises licence holder shall ensure images from the CCTV are retained for a period of 31 days. This image retention period may be reviewed as appropriate by the Licensing Authority;

(iv) The correct time and date will be generated onto both the recording and the real time image screen;

(v) If the CCTV equipment (including any mobile units in use at the premises) breaks down the Premises Licence Holder shall ensure the designated premises supervisor, or in his/her absence other responsible person, verbally informs the Licensing Authority and the Police as soon as is reasonably practicable. This information shall be contemporaneously recorded in the incident report register and shall include the time, date and means this was done and to whom the information was reported. Equipment failures shall be repaired or replaced as soon as is reasonably practicable and without undue delay. The Licensing Authority and the Police shall be informed when faults are rectified;

(vi) The premise licence holder shall ensure that there are trained members of staff available during licensable hours to be able to reproduce and download CCTV images into a removable format at the request of any authorised officer of the Licensing Authority or a constable;

(vii) There shall be clear signage indicating that CCTV equipment is in use and recording at the premises during (insert hours) hours.

2.) The Premises Licence Holder shall have a procedure in place to ensure that the Exit is checked regularly and clear of obstructions at all times.

3) The staff will ensure that the customer area will be free of trip hazards and spillages at all times.

4) Noise or vibration shall not emanate from the premises so as to cause a nuisance.

5) If the general public congregating outside the premises are causing anti-social behaviour, the management shall request that they leave, and if the problem persists the Police shall be called to support.

6) Prominent, clear and legible signage (in not less than 32 font bold) shall be displayed at all exits to the premises requesting the public to respect the needs of local residents and to leave the premises quietly.

7) The premises shall operate a Challenge 25 Policy. Such policy shall be written down and kept at the premises. The policy shall be produced on demand of the Police or an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) or an authorised Trading Standards Officer the Local Authority/Council. Prominent, clear and legible signage (in not less than 32 font bold) shall also be displayed at all entrances to the premises as well as at, at least one location behind any counter advertising the scheme operated.

8) A written register of Refusals will be kept including a description of the people who have been unable to provide required identification to prove their age. Such records shall be kept for a period of 12 months and will be collected by the Designated Premises Supervisor and produced to the police or an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) or an authorised Trading Standards Officer the Local Authority/Council on demand.

9) All staff engaged in the sale of alcohol to be trained in responsible alcohol retailing to the minimum standard of BIIAB level 1 or any equivalent training course within 1 month of commencing employment at the premises. Where there are existing staff this training shall be completed within 3 months of the date that this condition first appears on the licence. No person shall be authorised to sell or supply alcohol until this training is completed. Refresher training will be conducted at 12 monthly intervals. Training records shall be kept on the premises and produced to the police or an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) or an authorised Trading Standards Officer of the Local Authority/Council on demand.

DELIVERIES:

10) The person delivering the alcohol on behalf of the premises shall operate a Challenge 25 policy and shall require proof of age prior to the alcohol being handed over. No alcohol shall be handed over to a person under 18. The only acceptable proof of identity shall be a photographic driver's licence, a passport or an Identity Card containing the PASS Hologram. The website shall contain a declaration to this effect.

1.4 RELEVANT CONSIDERATIONS

Caerphilly County Borough Council Licensing Policy **Appendix 4**
National Guidance **Appendix 5**

1.5 RELEVANT REPRESENTATIONS RECEIVED DURING APPLICATION PROCESS

1.5.1 Responsible Authorities:

Police

Document	Date received	Appendix Reference
representation	13/12/2023	Appendix 6

Licensing Authority in role as Responsible Authority

Document	Date received	Appendix Reference
representation	20/12/2023	Appendix 7

The Fire Service and Child Protection Officer responded to indicate that they had no representations in respect of the premises licence application.

1.5.2 Other Persons:Residents

Document	Date Received	Appendix Reference
SC Watkins - initial representation	17/12/2023	Appendix 8
Subsequent comments	22/12/2023	
L Stephens representation	21/12/2023	Appendix 9
D Davies - initial representation	21/12/2023	Appendix 10
Subsequent comments	22/12/2023	
C Dix representation	22/12/2023	Appendix 11

1.5.3 Other Persons:Elected Member

Document	Date received	Appendix Reference
Elected Member representation	31/12/2023	Appendix 12

1.6 SUMMARY OF REPRESENTATIONS

Heddlu Gwent Police have detailed a visit to the premises on the 11th December 2023, in conjunction with the Licensing Authority in its role as a responsible authority.

The Police do not object to the application but have advocated the rewording of and the addition of conditions relating to CCTV, Challenge 25, refusal and incident recording, retention of staff training records and deliveries of alcohol.

The Licensing Authority Officer in its role as a responsible authority has not objected to application. The Officer detailed that the applicant had not sought pre-application advice, prior to submitting an application. The officer advocated conditions in relation to staff training and alcohol deliveries.

The Fire Officer and Child Protection Officer have responded to confirm they have no representations in respect of the application.

There were 4 resident objections to the application and an objection received from an Elected Member for the area.

Concern was expressed in respect of public safety and the safety of children, given the location of the premises at a crossroads and traffic and absence of parking. There are fears about children going to and from school at peak times. Reference is also made to a prior alcohol related stabbing.

Another resident detail's concerns over public safety and opening hours. Comment is made about increased activity and disruption of the highway. Concern is expressed about continuous illegal activity ongoing in this area. Reference is made to gang activities, fires and drug dealing in the area and that the Police service is under pressure. Comment is expressed about the existing numerous alcohol outlets that already cover the times proposed by the applicant.

Reference is made about a resident's proximity to the proposed premises and that there are many alcoholics and "druggies" and fears disturbance until the premises closes. The resident advocates declining the application for the safety and wellbeing of all the people that live in Cefn Fforest.

The Elected Member details that her grounds for objection relate to likely public nuisance and public safety. Comment is expressed about the premises unusual location where two main roads intersect and its dangerous nature. Concern is referenced about parking.

Comment is made about 5 other premises already selling alcohol and of the hours sought that will increase availability. Reference is made to health and social issues and that the hours sought 8.00 to 23.00 excessive and irresponsible and increased potential for noise in the evening and late into the night. A query is also raised in respect of Planning requirements in relation to the premises.

1.7 APPLICANT RESPONSE

The applicant has responded and accepted the proposed conditions advocated by the Police and the Licensing authority in its role as a Responsible Authority. The applicant has responded and acknowledged receipt of the comments received from Other Parties and has submitted crime and antisocial behaviour data for the area in the vicinity of the premises. This information is reproduced as **Appendix 13**.

1.8 LICENSING ASSESSMENT

THE LICENSING ASSESSMENT IS A PROVISIONAL SUMMARY, BASED ON REPRESENTATIONS RECEIVED PRIOR TO THE HEARING. THE HEAD OF PUBLIC PROTECTION, COMMUNITY AND LEISURE SERVICES RESERVES THE RIGHT TO AMEND OR VARY THE PROVISIONS CONTAINED IN THE SUMMARY AND RECOMMENDATION, SUBJECT TO ANY CHANGE IN THE MATERIAL

FACTS THAT BECOME KNOWN AT THE HEARING. THE SUB-COMMITTEE IS OBLIGED TO DETERMINE THIS APPLICATION WITH A VIEW TO PROMOTING THE LICENSING OBJECTIVES WHICH ARE:

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

In making its decision, the Sub Committee is obliged to have regard to:-

- Licensing Act 2003
- Statutory Guidance issued under S182 of the Licensing Act
- The Council's own licensing policy, and
- All representations made and evidence presented

NOTE: THE SUB-COMMITTEE MAY NOT MODIFY THE CONDITIONS OR REJECT THE WHOLE OR PART OF THE APPLICATION MERELY BECAUSE IT CONSIDERS IT DESIRABLE TO DO SO. ANY SUCH ACTIONS MUST BE NECESSARY IN ORDER TO PROMOTE THE LICENSING OBJECTIVES.

Statutory Power - Licensing Act 2003. This is a Council function which is delegated to this committee to decide.

1.9 OBSERVATIONS

This application relates to the granting of a new premises licence, for the provision of 'off sales' of alcohol. The proposed premises is the former Stonehouse Inn, 25 Bryn Road, Cefn Fforest.

It should be noted that the premises licence for the Stonehouse Inn currently remains in place, however it is anticipated that should the applicant be successful with this application then the licence for the Stonehouse Inn will be surrendered.

The applicant seeks to provide the retail sale of alcohol between the hours of 08.00hrs to 23.00hrs Monday to Sunday.

Representations making objections to the granting of the premises licence have been received from 4 residents and an Elected Member for the area.

The concerns of the local residents and Elected Member whilst understandable, appear to be largely anticipatory in nature about the increased levels of behaviour or issues which could arise, should a licence be granted for this premises. Case law in *Daniel Thwaites PLC v Wirral Magistrates Court 2008* has considered similar issues in relation to real evidence and weight to be afforded.

It is noted that some of the objections detailed by the residents and Elected Member are not specifically linked to the licensing objectives, for example traffic concerns or provision of parking which would not ordinarily be a consideration for Members.

In relation to the premises location at a crossroads, traffic and parking concerns raised, it should be noted that Highway safety is not specifically referenced as a licensing objective under the Licensing Act 2003. Members will therefore have to consider whether the road network / highway or traffic issues fall within the Public

Safety Licensing objective. It is noted there are no concerns referenced to this effect by the Fire & Rescue Service or the Police. It should also be noted that Highways are not a statutory consultee under the Licensing Act 2003.

However, Paragraph 9.9 of the Section 182 Home Office National Guidance provides the following guidance when considering the merits or relevance of representations and states *'It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.'*

Furthermore, whilst comments related to health concerns given alcohol availability in the area are noteworthy, Health is not currently a Licensing objective detailed within the Licensing Act 2003.

Paragraph 28.14 of the council's statement of licensing policy states *'The Licensing Authority recognises that, although public health is not a licensing objective, health bodies may hold information which other responsible authorities do not, but which would assist the Licensing Authority in exercising its functions.'*

It is noted that there has been no response to the application from the Local Health Board in its role as a Responsible Authority in respect of this application.

Residents have expressed concerns about the hours proposed by the applicant i.e 8am to 11pm. In relation to this application, no adverse comments as to proposed hours have been received from the Responsible Authorities.

Guidance for Members in relation to hours' is offered in the Home Office Section 182 Guidance at Paragraph 10.15 which details *'Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours'*.

Furthermore, the council's statement of Licensing Policy, paragraph 22.1 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 premises, which are known to be a focus or cause of disorder and disturbance then, subject to representations from the police and other responsible authorities, a limitation on licensing hours may be appropriate.'*

The table below details shows, the licensable hours of off licences located in Cefn Fforest.

Name	Permitted Hours	Approx Distance from proposed premises
Cefn Fforest Stores, Bedwellty Road	Monday – Sunday 06.00 - 21.00	0.842 KM - 0.5 Miles
Spar Cefn Fforest Avenue	Monday – Saturday 08.00 – 23.00 Sunday 10.00 – 22.30	0.428 KM - 0.2Miles
VG Stores Bedwellty Road	Monday – Sunday 09.00 - 21.00	0.255 KM - 0.1Miles

Whilst reference has been made by the Elected Member to the hours applied for in this application being “clearly excessive,” this is not necessarily felt to be the case or indeed reflected when considering the other existing licensed premises above.

There has been reference by ‘Other Parties’ to the number of existing licensed premises in the area, however the Council does not currently have any cumulative impact areas and therefore the number or type of other licensed premises in the vicinity would not ordinarily be a consideration for Members of the Sub Committee. The same principle would apply in relation to the ‘need’ or otherwise for a new, licensed premises.

Advice for Members in relation to need, is provided within the Section 182 Home Office National Guidance, Paragraph 14.19 states *‘There can be confusion about the difference between the “need” for premises and the “cumulative impact” of premises on the licensing objectives, for example, on crime and disorder. “Need” concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy.’*

Despite residents referencing existing crime and antisocial behaviour in the area. It is unclear from the representations whether these issues may be the area immediately around Fitzroy Gardens, the area in the locality of the Premises, or Cefn Fforest as a whole or how recently these issues have taken place. Reference was made to a stabbing, however, no information provided as where and when this is alleged incident has taken place. The applicant has submitted a document in the form of graphs and statistical information as to crime and anti-social information in the vicinity of the premises.

Gwent Police as the lead responsible authority in relation to crime and disorder have not objected to the application nor curtailed hours sought but have advocated conditions should a licence be approved. The conditions proposed by the Police in relation to provision of CCTV, Staff Training, Incident and refusals book and alcohol deliveries have been accepted by the applicant.

Paragraph 2.27 of Section 182 Home Office National Guidance provides advice to Members *‘Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in antisocial behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.’*

Other Parties have referenced existing anti-social behaviour in the area currently. If they are alcohol fuelled, then these or any historical issues will not be as a result of the actions of the applicant as they are yet to commence trading. There is no information to suggest that a ‘new’ alcohol outlet, if appropriately managed will add to the issues that are being reported.

The position taken by the Police has been supported by the Licensing Authority in its role as a responsible authority who also advocate conditions as opposed to any objection. Whilst residents referenced concerns in respect of public nuisance, it is

noted that that there were no representations received to the application from the lead authority for public nuisance namely Environmental Health (Pollution Team).

Following a site visit and discussion with the applicant, the Police (and Licensing Authority in role as responsible authority) appear to be satisfied with the applicant's ability to promote the licensing objectives, subject to conditions agreed with the applicant.

Paragraph 9.12 of the Section 182 Home Office National Guidance states - *Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, 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 usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.*

In the absence of any other adverse representations from Responsible Authorities (RA's), the RA's appear to be satisfied with the applicant's ability to promote the licensing objectives.

Paragraph 28.9 of the council's statement of licensing policy provides advice in relation to the above and states '*Whilst all responsible authorities may make representations regarding applications for licences and club premises certificates and full variation applications, it is the responsibility of each Responsible Authority to determine when they have appropriate grounds to do so.*'

No confidence in management concerns have been raised by any of the Responsible Authorities in their representations in relation to the applicant.

It should be noted that confirmation has been provided by the Planning Department that the building subject to the application currently holds A3 Planning usage, this "permits the sale of food or drink for consumption on the premises or of hot food for consumption off the premises." Therefore, no other 'additional' Planning permission is required to operate a shop selling food or drink from this location. If Members determined to refuse the application to permit the sale of alcohol, then it would not prevent the applicants' ability to sell other food and non-alcoholic drink products.

Members of the Sub Licensing Committee will be required to determine the application in relation to the promotion of the four licensing objectives i.e prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.

1.10 RECOMMENDATION

Having had regard to the objections made by residents and the Elected Member and considered the position of the Responsible Authorities, it is recommended that the

application to permit the sale of alcohol for off sales, between the hours of 08.00hrs to 23.00hrs, Monday to Sunday **be granted** subject to the following conditions as set out in **Appendix 14**.

In reaching this conclusion, it is noted that there are no objections to the application from Responsible Authorities nor confidence in management concerns. It is considered that any potential conflicts with the promotion of the Licensing Objectives may be adequately controlled by the recommended conditions set out in **Appendix 14**.

Background Papers: Statutory Guidance issued under S182 of the Licensing Act

Caerphilly CBC Statement of Licensing Policy

Date of this report: 9th January 2024

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