



**LICENSING AND GAMBLING SUB COMMITTEE
19TH JUNE 2024**

SUBJECT: DETERMINATION OF A NEW PREMISES LICENCE APPLICATION

REPORT BY: KATHRYN HOPKINS - SENIOR LICENSING OFFICER

1. Application Details –

<u>Applicant</u>	<u>Premises</u>	<u>Application Type</u>
Euro Garages Ltd	ASDA Express PFS Chequered Flag Newport Road Trethomas CF83 8GB	New premises licence

1.1 Application for a New Premises Licence

On 24th April 2024, an application for a new premises licence under the Licensing Act 2003 was made in respect of the above-mentioned premise.

The initial application for the grant of a Premises Licence sought the sale of alcohol via off sales, 24 hours a day, Monday to Sunday and Late-Night Refreshment (LNR) between the hours 23.00 to 05.00.

Following the application process, the applicant subsequently amended his application to reflect the sale of alcohol for off sales, between the hours of 06.00 until 23.00 Monday to Sunday.

In addition, the applicant also agreed that no customers will be able to enter the premises between the hours of 22.00 until 06.00 and in respect of Late-Night Refreshment (LNR) that this be limited to hot drinks only, via a 'night hatch.'

The proposed application for consideration is set out in **1.2** of this report.

1.2 Proposed Trading Times and Licensable Activity

The initial application for a new Premises Licence sought to permit the following Licensable Activities.

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

Monday to Sunday inclusive, 00.00 – 23.59 (24 HRS)

- **Late Night Refreshment (LNR) -**

Monday to Sunday, 23.00 – 05.00

The revised proposed hours following the consultation period are as follows: -

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

Monday to Sunday, 06.00 – 23.00

- **Late Night Refreshment (LNR) -**

Monday to Sunday, 23.00 – 05.00

1.3 Site Plan/Photographs

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

A location plan is reproduced as **Appendix 2**.

Photographs of the premise are reproduced as **Appendix 3**.

1.4 Other Licensed Premises in the Vicinity/Trading Times

The following licensed premises can be found within the vicinity to sell alcohol.

- Tesco Express – PRM145
Monday to Sunday, 06.00 to 23.00
- Trethomas News – PRM072
Monday to Saturday, 08.00 to 23.00
Sunday, 10.00 to 22.30

1.5 Operating Schedule

The applicant volunteered the following steps to promote the Licensing Objectives as part of the Operating Schedule and are reproduced directly from the application: -

Staff shall be trained in the premises licence holder's procedures which include liquor licensing and all checkout operators shall have additional training in the sale of alcohol.

All spirits will be displayed behind the counter.

No miniature bottles of spirits of 20cl or below shall be sold from the premises. Please note this does not apply to pre packaged gift packs which may contain a spirit miniature.

A CCTV system will be installed and maintained at the premises. Cameras will cover internal areas and the external area immediately in front of the store. The system will be capable of continuously recording and copies of such recordings shall be kept for a period of not less than 31 days and handed to the Police or authorised person upon production of a compliant 'Access Request'.

All spirits will be displayed behind the counter.

The premise licence holder seeks to comply with the requirements of the health and safety legislation.

The store will have a till prompt system for alcohol products.

When prompted, staff will adopt a Challenge 25 proof of age scheme. Only recognised forms of photographic identification such as Passport, Photo Driving Licence, 'Proof of Age' card, Military ID or any other form of identification agreed with the police will be accepted as proof of age. If the appropriate proof of age is not produced there will be no sale.

Notices are to be prominently displayed advising customers of the Challenge 25 policy.

1.6 Site History

A premises formerly known as Chequered Flag Service Station was licensed for the following licensable activities at the same location: -

Sale of alcohol

Monday to Sunday, 0.00 - 23.59

Late Night Refreshment (LNR)

Monday to Sunday, 23.00 – 05.00

The above permission was granted at a Licensing & Gambling Sub Committee on 26th June 2014 following representations.

In 2017, the licence holder Euro Garages Ltd applied to remove alcohol by way of a minor variation which was approved under delegated powers by the Licensing Authority. Therefore, the only licensable activity permitted was for Late Night Refreshment (LNR) between the hours 23.00 – 05.00.

The premise licence was subsequently surrendered by the licence holder on 12th January 2021 and has since been operating as a petrol station/convenience store without the benefit of a premises licence.

1.7 **RELEVANT CONSIDERATIONS**

Caerphilly County Borough Council Licensing Policy **Appendix 4**

National Guidance **Appendix 5**

1.8 **RELEVANT REPRESENTATIONS RECEIVED DURING CONSULTATION PERIOD**

1.8.1 Responsible Authorities:

Environmental Health (Noise Pollution)

Document	Date Received	Appendix Reference
Representation	17/05/2024	Appendix 6

Gwent Police

Document	Date Received	Appendix Reference
Representation	21/05/2024	Appendix 7

Licensing Authority (in its role as Responsible Authority)

Document	Date Received	Appendix Reference
Representation	21/05/2024	Appendix 8

Fire and Childrens Services have indicated that they have no representations in respect of the application. The Environmental Health Officer (H&S) confirmed no representations and supports comments by other Responsible Authorities.

1.8.2 Other Persons:

Over 100 identical objections were received within the 28 day consultation period from residents of Lower Graig-Y-Rhacca. These were received by way of letter or email in a petition format from residents, the Elected Member and community councillors. Two residents provided individual representations detailing their objection to the application.

A copy of these objections, together with a list of persons objecting is reproduced at **Appendix 9**.

1.9 **SUMMARY OF REPRESENTATIONS**

Environmental Health (Noise Pollution)

The Environmental Health Officer detailed significant concerns regarding the proposed licensable hours may have upon nearby residents and the local area. Concern was

expressed that the premise could be a magnet for youths which may give rise to excessive noise, rowdy behaviour and littering.

Concern was also expressed that the applicant had not provided any details in their submission as to any mitigation that had been considered, or measures put in place to minimise the potential impact the proposed licensable activities and potential nuisance from external lighting may have upon the prevention of public nuisance to nearby residents and the local community.

The Environmental Health Officer welcomed additional conditions offered by Gwent Police which was agreed by the applicant, however the officer still had concerns that the provision of late-night refreshment and supply of alcohol after 23.00 hours was likely to compromise the Prevention of Public Nuisance licensing objective. Having regard to this, the Environmental Health Officer advocated restricting the supply of alcohol between 06.00 to 23.00 and proposed other conditions which were deemed reasonable and more amenable to the local area. Should the applicant accept these conditions then the Environmental Health Officer would not object to the application.

Gwent Police

Gwent Police discussed the application with the applicant and was satisfied with the applicants proposed conditions as part of their operating schedule. Gwent Police did not object to the hours for sale of alcohol and LNR, however advocated additional conditions in relation to the promotion of the licensing objectives which was subsequently agreed by the applicant. These included restricting access to the premises between 22.00hrs and 06.00hrs and limiting late night refreshment to hot drinks only.

Licensing Authority (in its role as a Responsible Authority)

The Licensing Authority in its role as Responsible Authority has no representations providing the applicant amends the hours for the sale of alcohol between 06.00 to midnight as proposed by the applicant by way of mediation from residents' objections. The Licensing Authority supports the additional conditions suggested by Gwent Police which has been agreed by the applicant.

Other Persons/Residents

Representations have been received from over 100 residents, including an Elected Member and Blackwood, Trethomas & Machen Community Council during the consultation process who lodged objections to the grant of the premises licence application.

A document which appears to be in a form of a petition as referred to in **Appendix 9** was signed by multiple signatories objecting to the application. The objections received refers to a reduction in crime and disorder (following the cessation of alcohol sales from a premises previously authorised to sell alcohol), public safety incidents, public nuisance, anti-social behaviour and the absence of alcohol cans littered throughout the surrounding areas since the previous licence holder stopped selling alcohol from the premise.

The residents have concerns that the application if granted could result in a rise of instances of harm to children, anti-social behaviour, and littering.

Furthermore, residents also object on the basis that there is another licensed premise within 500m of this premise that sells alcohol 7 days a week until 23.00 hours.

The Local Member detailed concerns in respect of previous licence holders and litter generated by the business and expressed concern over groups of people and vehicles which may congregate for hot food. Reference was made to groups which had previously gathered in the local woods when alcohol had been available. Comment was expressed that residents may be more amenable to a lesser period than the hours originally applied for by the applicant.

In addition, to signing the petition, resident Valerie Davies also expressed further concerns relating to night time raids when the premise was previously licensed to sell alcohol causing injuries to her late friend and asks what safety measures will be in place for employees, customers and general public should incidents occur.

Mrs Davies detailed concerns relating to males congregating on the path near Redbrook Lane drinking and smoking, causing her to feel intimidated, and concerns that there will be an increase in litter and broken glass as *"the council's budget no longer stretches to regular litter clearing"*.

Mrs Davies also expressed concerns about 'makeshift' camping sites creating nuisance and a public health hazard. Her concerns have been discussed with local police officers who assured her they would also object to the application. Mrs Davies raised a question as to why petrol stations are allowed to sell alcoholic products and by granting a third premise to sell alcohol within a 500 metre is *"asking for trouble"*. Mrs Davies feels this is about profit and the community will suffer in the end should this application be approved.

In addition to signing the petition residents Clare & Tim Cannon provided further comments expressing their concerns that when the garage previously sold alcohol it was awful, especially during weekends where empty cans and bottles ended up in their garden or on cars. Anti-social behaviour was noticeable in the area with people setting fire to paper on top of the cars. However, this behaviour ceased when the garage stopped selling alcohol.

Mr & Mrs Cannon also expressed further concern to litter in the woods, with empty cans in the stream. Mr Cannon also encountered an incident with a drunk male who showed violent behaviour towards him.

Mr & Mrs Cannon believe the problems will only get worse if the premise is allowed to sell alcohol and that the existing premises licensed to sell alcohol in the area is sufficient without the need of another. They expressed concerns about garages being permitted to sell alcohol and concerned about potential drink driving. They are concerned about 24 hour opening causing anxiety to their selves and their neighbours in a known drug/alcohol area.

Residents were advised of the applicant's response following their objection to the application in which the applicant had initially agreed to amend the hours for alcohol sales to 06.00 to midnight if they would withdraw their representations, also advising Gwent Police had no objection to the 24-hour sale of alcohol and agreed a condition that LNR will be for hot drinks only.

Following representations from the Environmental Health Officer (Noise Pollution) the applicant agreed to further amend the hours for the sale of alcohol from 06.00 to 23.00.

At the time of drafting this report, residents/other persons have responded after considering the applicant's response resulting in one resident withdrawing their objection, whilst other residents maintaining they do not wish to withdraw their objection and wish to attend a hearing.

1.10 APPLICANT RESPONSE

The applicant's agent acknowledged receipt of objections received from 'other persons' under the legislation and agreed by way of mediation to amend the hours for the sale of alcohol Monday to Sunday between the hours 06.00 to midnight.

Following discussions with Gwent Police in relation to the application, the applicant also agreed to additional conditions offered to promote the licensing objectives. The applicant agreed that all sales between the hours of 22.00 to 06.00 take place through a 'night hatch', and an amended plan was submitted to reflect the location of the 'night hatch'.

The applicant has agreed to the conditions proposed by the Environmental Health Officer (Noise Pollution) and agreed to further amend the hours for the sale of alcohol between 06.00 to 23.00.

1.11 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.

In addition to the above, in accordance with Regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005, the authority may take into account documentary or other information produced by a party in support of their application, representations or notice either before the hearing or, with the consent of all parties, at the hearing.

Furthermore, the Sub Committee may accept hearsay evidence and it will be a matter for the members to attach what weight to it that they consider appropriate. Hearsay evidence is evidence of something that a witness neither saw nor heard but has heard or read about.

1.12 OBSERVATIONS

This application seeks to provide licensable activities in relation to the sale of alcohol from 06.00 – 23.00 hours and late-night refreshment (LNR) from 23.00 to 05.00 hours Monday to Sunday.

Following the 28-day consultation representations were received from Environmental Health (Noise Pollution), Gwent Police and the Licensing Authority in its role as a Responsible Authority.

In addition, the Elected Member for the area and two residents (Other Parties) have submitted their own objections together with over a hundred individuals who appear to have used a templated letter / email petition outlining their opposition to the application.

Gwent Police as the lead authority in relation to crime and disorder have not objected to the application but have advocated additional conditions to those offered by the applicant should a licence be approved.

These additional conditions included a restriction on customers being permitted to enter the premise between the hours of 22.00 and 06.00 and all sales during these hours will take place through a 'night hatch'. Furthermore, late night refreshment (LNR) provided between the hours of 23.00 and 05.00 would be for hot drinks only. These proposed conditions have been accepted by the applicant.

Section 182 Home Office National Guidance, in particular Paragraph 9.12 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.'*

Paragraph 8.42 of the Section 182 Home Office National Guidance echoes the above requirements by licensees and states - *'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.'*

The Environmental Health Officer (Noise Pollution) and the Licensing Authority (in its role as a responsible authority) expressed concerns that the applicant had not considered fully the impact the premises would have in terms of Public Nuisance. Paragraph 5.7 of the Council's policy states *'Applicants and existing licensees should be mindful of local areas where there may be a concentration of problematic drinkers or where it is known that groups of people congregated and have caused anti-social behaviour. Applicants should very carefully consider the appropriateness of selling alcohol during early morning or late evening hours'*.

In this instance, the applicant has failed to contact the appropriate Responsible Authorities to discuss proposals prior to submitting his application. Paragraph 10.3 of the council's licensing policy states *'Applicants are recommended to seek advice from the Licensing Authority's licensing officers and the police, as well as taking into account, as appropriate, local planning and transport policies, tourism, cultural and crime prevention strategies, when preparing their plans and operating schedules'*. Paragraph 26.2 of the council's statement of licensing policy also states, *'In completing an operating schedule, applicants are expected to have regard to this statement of licensing policy and to demonstrate suitable knowledge of their local area when describing the steps that they propose to take in order to promote the Licensing Objectives.'*

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 and can have regard to the following extracts of the Section 182 Home Office Guidance and the council's own Statement of Licensing Policy.

Paragraph 5.4 of the council's statement of licensing policy offers advice in relation to permitted hours for the sale of alcohol and consideration of the local environment and states *'The Licensing Authority notes that the Government's Section 182 Guidance states that "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". However, because of the problems experienced in some local communities in the county borough arising from the availability of alcohol for sale at local shops for consumption off the premises this Licensing Authority has decided that it will not adopt this general position but instead will expect applicants and licence-holders to trade alcohol at hours which are appropriate to their particular local environment. Therefore applicants should very carefully consider the hours*

they seek when devising their operating schedule and it is recommended to discuss such application with the appropriate Responsible Authorities.'

Paragraph 5.5 of the council's statement of licensing policy highlights the effect on applications where alcohol hours have not been properly considered and states *'In the event that applications are submitted which have not demonstrated that appropriate alcohol trading hours have been properly considered, it is likely that representations will be made by the relevant responsible authorities and the public. This will delay the determination of the application and result in it being referred to a Licensing Sub-Committee for determination.'*

Paragraph 7.4 of the council's statement of licensing policy states *'The intent of the Licensing Act 2003 is to regulate the supply of alcohol. Licensing is therefore the key mechanism by which the availability of alcohol can be regulated, through regulating the times and days of the week alcohol can be sold, premises which can supply alcohol and the conditions of sale.'*

Paragraph 1.17 of the Section 182 Home Office National Guidance states – *Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.*

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.'*

It is noted that some of content of the objections detailed by the residents are not specifically linked to the licensing objectives, for example, the commercial demand for another premise would not ordinarily be a consideration for Members.

There has been reference to the existing number of 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.'*

The concerns of the local residents 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. There is particular reference to the issues which arose during a time where a premises at this location held a licence to sell alcohol.

The petition submitted reflects comments from residents of Lower Graig-Y-Rhacca. These concerns appear to be quite narrow in their nature and primarily relate to the previous licence holder and links to alleged anti-social behaviour & litter and its impact on Sustrans routes. Given their comments, should Members determine to grant a licence the applicant will be aware of the concerns about prior issues with litter and should ensure that these are addressed on site.

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 and *The Noble Organisation v Kilmarnock and Loudoun District Council (1993)* states “*the mere number of objections irrespective of their content should not be a good reason for refusing an application, what matters are the grounds on which the objections are based*”.

Paragraph 28.24 of the council’s statement of licensing policy provides the following guidance when considering petitions and states that the “*Licensing Authority will accept petitions, but there are some important factors to consider before organising a petition: • We ask that the organiser of the petition identify himself or herself as a central point of contact. We may need to make contact in order to verify certain matters if we are unable to do this it could invalidate the petition. • Each page of the petition should contain information as to the purpose of the petition so that all persons know what they are signing. • Full names and addresses must be supplied • All signatories must be made aware that a copy of the petition will be supplied to the applicant and a copy will be contained within the committee papers, so their personal details will become public knowledge. We will not write to each signatory separately, but instead assume that the organiser will advise each signatory of the hearing date and the final outcome of the application. It is expected that the organiser will represent the signatories at the hearing and to speak for them. When making a decision, the Licensing Authority will give appropriate weight to a petition. Those wishing to make representations should appreciate that the quality of the representations we receive is an important consideration when making a decision*”.

The concerns in relation to Crime & Disorder have not been reflected by Gwent Police as the lead Responsible Authority for Crime & Disorder. The position taken by the Responsible Authorities has been to seek conditions and revision of operating hours as opposed to an outright objection.

Other Parties will be able to amplify their concerns about the merits of this application given reference to “antisocial behaviour” and littering at the meeting.

However, Members are directed to Paragraph 2.27 of Section 182 Home Office National Guidance which states ‘*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.*

It should be noted that irrespective of the outcome of the application for a new premises licence which seeks to authorise alcohol sales and the sale of hot food/drinks between 23.00 and 05.00hrs the premises, can continue to trade and sell other items for which no licence or authorisation is required 24hours a day.

1.13 **RECOMMENDATION**

Having had regard to objections received from residents and 'other persons', together with comments received from the Responsible Authorities, it is recommended that the application to permit the sale of alcohol for off sales and Late-Night Refreshment (LNR) as set out in paragraph 1.2 of the report, be granted as follows and subject to the conditions as set out in **Appendix 10**.

Alcohol (off sales)
Monday to Sunday, 06.00 – 23.00

Late Night Refreshment (Hot Drinks Only)
Monday to Sunday, 23.00 – 05.00

In reaching this conclusion, it is noted that there are no objections from Responsible Authorities.

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

Caerphilly CBC Statement of Licensing Policy (2021)

Date of this report: 29th May 2024

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