

<b>Report to:</b>	<b>SPEAKERS PANEL (LIQUOR LICENSING)</b>
<b>Date:</b>	28 March 2024
<b>Reporting Officer:</b>	Emma Varnam – Assistant Director of Operations & Neighbourhoods
<b>Subject:</b>	<b>APPLICATION FOR A NEW PREMISES LICENCE – ASDA EXPRESS PFS STALYBRIDGE, STAMFORD STREET, STALYBRIDGE, SK15 1LH</b>
<b>Report Summary:</b>	Members are requested to determine the application.
<b>Recommendations:</b>	<p>Having regard to the application and the relevant representations, Members are invited to take such steps (if any) as it considers appropriate for the promotion of the licensing objectives. The steps available are:-</p> <p>(a) to grant the licence subject to –</p> <p style="padding-left: 40px;">(i) such conditions that the authority considers appropriate for the promotion of the licensing objectives, and</p> <p style="padding-left: 40px;">(ii) current mandatory conditions;</p> <p>(b) to exclude from the scope of the licence any of the licensable activities to which the application relates;</p> <p>(c) to refuse to specify a person in the licence as the premises supervisor;</p> <p>(d) to reject the application.</p>
<b>Corporate Plan:</b>	Living Well – Improve satisfaction with local community.
<b>Policy Implications:</b>	Members are provided with policy guidelines to assist in the decision making process.
<b>Financial Implications: (Authorised by the statutory Section 151 Officer &amp; Chief Finance Officer)</b>	There are limited financial implications for the Council, as detailed in the report, however, any legal challenge to a policy decision may potentially incur costs.
<b>Legal Implications: (Authorised by the Borough Solicitor)</b>	<p>In determining the application the Panel must do so with a view to promoting the licensing objectives. The Panel must have regard to its own licensing policy and the Guidance issued pursuant to s182 Licensing Act 2003. The Panel’s decision must be supported with reasons.</p> <p>If the Panel rejects the application, that decision can be challenged by the Applicant. If the Panel grants the licence, the Applicant can appeal against any of the conditions imposed on the licence or against a decision to refuse to specify a person in the licence as the premises supervisor. Any person who made relevant representations can appeal against the decision to grant the licence or against any of the conditions imposed on the licence or on the grounds that the Panel should have refused to specify a person in the licence as the premises supervisor. Any challenge would be by</p>

way of an appeal to the Magistrate's Court, which may dismiss the appeal, substitute for the decision appealed against any other decision, which could have been made by the licensing authority, or remit the case to the licensing authority to dispose of it in accordance with the direction of the court, and may make such order as to costs as it thinks fit. If an appeal were successful the Magistrates would be unlikely to order costs against the Local Authority if the authority had acted honestly, reasonably, properly and on grounds that reasonably appeared to be sound, in exercise of its public duty.

**Risk Management:**

Failure to give full consideration to the determination of licensing issues has the potential to impact on public safety.

**Access to Information:**

The author of the report is Mike Robinson, Regulatory Services Manager (Licensing).

**Background Information:**

The background papers relating to this report can be inspected by contacting Mike Robinson



Telephone: 0161 342 4122



e-mail: [mike.robinson@tameside.gov.uk](mailto:mike.robinson@tameside.gov.uk)

## 1. INTRODUCTION

- 1.1 Section 17 of the Licensing Act 2003 outlines the procedure whereby an application can be made to the Licensing Authority for a premises licence.
- 1.2 Section 18(3) of the Licensing Act 2003 states that where relevant representations are made in respect of such an application, the authority must:-
- (a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and
  - (b) having regard to the representations, take such steps as mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives.
- 1.3 The steps mentioned in subsection (4) are:
- (a) to grant the licence subject to –
    - (i) such conditions that the authority considers appropriate for the promotion of the licensing objectives, and
    - (ii) current mandatory conditions;
  - (b) to exclude from the scope of the licence any of the licensable activities to which the application relates;
  - (c) to refuse to specify a person in the licence as the premises supervisor;
  - (d) to reject the application.

## 2. REPORT

- 2.1 The Licensing Office received an application for a new premises licence regarding Asda Express PFS Stalybridge, Stamford Street, Stalybridge, SK15 1LH on 16 January 2024. The named applicant is Euro Garages Limited and proposed Designated Premises Supervisor (DPS) is Mr Neil Eccles.
- 2.2 A location map, including a photograph of the premises is attached at **Appendix 1**.
- 2.3 The original application, a copy of which can be found at **Appendix 2**, is seeking the authorisation of licensable activities, namely the provision of sale of alcohol and late night refreshment. The application is summarised as follows:-

### **Supply of alcohol (off the premises)**

Monday – Sunday 00:00 – 24:00

### **Provision of Late Night Refreshment**

Monday – Sunday 00:00 – 24:00

### **Premises Opening Hours**

Monday – Sunday 00:00 – 24:00

- 2.4 The revised guidance issued under section 182 of the Licensing Act 2003 states that with particular attention being drawn to section 5.22, 5.23 and 5.24, where a Local Authority considers a premises licence application for garages and motorway service areas (MSAs);
- 2.5 Section 176 of the 2003 Act prohibits the sale or supply of alcohol at motorway service areas (MSAs) and from premises, which are used primarily as a garage, or are part of premises used primarily as a garage. Premises are used primarily as a garage if they are used for one or more of the following:
- The retailing of petrol
  - The retailing of derv (diesel)
  - The sale of motor vehicles
  - The maintenance of motor vehicles

- 2.6 It is for the licensing authority to decide, based on the licensing objectives, whether it is appropriate for that premises to be granted a licence, taking into account the documents and information listed in section 17(3) and (4) which must accompany the application.
- 2.7 If a licence is granted in respect of a premises and the primary use of that premises subsequently changes (for example, the primary use becomes that of a garage rather than a shop) it would no longer be legal to sell alcohol on that premises. If a relevant representation is made, the licensing authority must decide whether or not the premises are used primarily as a garage.
- 2.8 The licensing authority requested the licence holder to provide further information to help establish what the primary use of the premises. The information was provided by the applicant on 30 January 2024 and is shown at **Appendix 3**.
- 2.9 On 13 February 2024, TMBC Licensing Department in its capacity as a Responsible Authority submitted a representation. However, the applicant was willing to mediate and agree the below conditions to alleviate the concerns raised regarding effective promotion of the licensing objectives. A list of the mutually agreed conditions are shown below.

**Conditions agreed**

**CCTV**

A tamper-proof digital colour CCTV system must be installed and maintained at the premises to the satisfaction of Greater Manchester Police. The system must run and record continuously for 24 hours a day, 7 days per week and recorded footage must be stored for a minimum of 28 days.

The system must provide a clear head and shoulders view to an evidential quality on every entry/exit route and within any other vulnerable areas as identified by Greater Manchester Police.

Recorded footage must be provided to a representative of any responsible authority on production of a valid Data Protection (DPA) request.

Such footage must be provided in an immediately viewable format and must include any software etc. which is required to view the footage. Any discs, portable drives or other storage media onto which footage is transferred must be provided by the premises and sufficient stock of such storage media must be kept on the premises at all times.

The Designated Premises Supervisor must ensure that the CCTV system is checked at least once every week by a suitably trained member of staff. This check must include the operation of the cameras, the recording facilities, the facilities for providing footage and the accuracy of the time & date.

**Challenge 25**

The premises must operate a "Challenge 25" scheme at the premise in relation to age verification for alcohol sales and other age-restricted products. Signs and/or posters must be displayed in prominent positions inside the premise to inform customers of this condition.

**Refusals Book**

A refusals book must be kept at the premises and must be used to record all refusals to sell alcohol for any reason. Where other age restricted products are sold at the premise, any refusals to sell such items to underage persons or persons who appear underage must be recorded. The details to be recorded must be as follows:

- (i) Time, day & date of refusal
- (ii) Item refused

(iii) Name & address of customer (if given)

(iv) Description of customer

(v) Details of i.d. offered (if shown)

The refusals book must be made available for inspection by responsible authorities on request. The refusal book can be hand written or in electronic form on the till.

### **Staff Training**

Any staff employed at the premises will receive training by the Designated Premises Supervisor on first appointment and at least every six months thereafter. Training will include input on preventing underage sales, sales of alcohol to people who are drunk, the misuse of drugs and any other relevant matters.

- A written record will be kept of all training carried out. This record must be kept on the premises and made available for inspection by any responsible authority.

### **Single Purchases**

There shall be no sale of single cans of beer, lager or cider from the premises - save for craft/premium priced products.

### **Reduce the Strength**

There will be no sales/supplies of beer, lager or cider with an ABV over 6.5% - save for craft/premium priced products.

### **Prohibition of alcohol sales at service areas or garages**

The licence holder will monitor the primary use of the premises and if transaction data demonstrates that the premises are excluded premises pursuant to S.176 of the Licensing Act 2003, the sale of alcohol will cease until such time as the data demonstrates that the premises are not so excluded. Such data will be maintained on a 6 monthly basis and will be available on request to the Police and the licensing authority. This condition will fall away in the event that S.176 is repealed.

### **Night Pay Window**

There will be no access for customers to enter the premises from 2200 hrs. The premises will use a Night Pay Window from 2200 hrs until 0600 hrs the following day.

## **3. REPRESENTATIONS & EVIDENCE SUBMITTED**

3.1 Representations have been received by TMBC Licensing and Public Health.

### **3.2 TMBC Licensing**

A representation relating to the application has been provided by James Horton of TMBC Licensing. A copy of this is attached at **Appendix 4**.

### **3.3 Public Health**

A representation has been received from James Mallion on behalf of Public Health. This is attached at **Appendix 5**.

## **4. HOME OFFICE GUIDANCE (S182 Licensing Act 2003)**

4.1 In determining this application the Panel must have regard to the Council's Statement of Licensing Policy and the statutory guidance issued pursuant to s182 of the Licensing Act 2003. The statutory guidance includes the following:

*Determining actions that are appropriate for the promotion of the licensing objectives:*

*9.42 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.*

*9.43 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.*

*9.44 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. 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.*

## **5. CONCLUSION AND OPTIONS FOR THE PANEL**

- 5.1 The Panel are requested to consider the evidence and decide what (if any) steps to take as it considers appropriate for the promotion of the licensing objectives. The options available to the Panel are;
- (a) to grant the licence subject to –
    - (i) such conditions that the authority considers appropriate for the promotion of the licensing objectives, and
    - (ii) current mandatory conditions;
  - (b) to exclude from the scope of the licence any of the licensable activities to which the application relates;
  - (c) to refuse to specify a person in the licence as the premises supervisor;
  - (d) to reject the application.