

**Agenda Item No:**

**Licence Reference** WK/0201101104

**Report To:** LICENSING SUB COMMITTEE

**Date:** 11<sup>TH</sup> MARCH 2011

**Report Title:** **Licensing Act 2003** - Application from an existing licence holder to vary the premises licence - **Murco Costcutter, Brookfield Road Service Station, Brookfield Road, Ashford, Kent, TN23 4ES**

**Report Author:** Licensing Manager



**Summary:**

The report advises Members of a licence application under the provisions of the Licensing Act 2003.

Application type: **Application from an existing licence holder to vary the premises licence**

Applicant: **Murco Petroleum Limited**

Premises: **Murco Costcutter, Brookfield Road Service Station, Brookfield Road, Ashford, Kent, TN23 4ES**

Members are asked to determine whether to grant the variation to the premises licence.

**Key Decision:** NO

**Affected Wards:** Beaver (Ashford)

**Recommendations:** **The Committee is asked to determine the application and decide whether to grant the variation to the premises licence.**

**Policy Overview:** The decision is to be made with regard to the Licensing Act 2003, Secretary of State's Guidance issued under Section 182 of the Act and the Council's Statement of Licensing Policy. Where the decision departs from the Policy or Guidance the departure must be directed solely at the attainment of the licensing objectives, and such departure must be supported by clear and cogent reasons.

**Financial Implications:** The costs associated with processing the application are taken from licensing fee income.

**Other Material Implications:** **HUMAN RIGHTS:** In considering this application the Sub Committee will balance the competing Human Rights of the various parties including the right to respect for private and family life, the protection of property and the right to a fair hearing.

**LEGAL:** Under the Licensing Act 2003 the Council has a duty to exercise licensing control of relevant premises.

**Exemption  
Clauses:**

Not applicable

**Background  
Papers:**

None

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**Report Title:**            **Licensing Act 2003 - Application from an existing licence holder to vary the premises licence for Murco Costcutter, Brookfield Road Service Station, Brookfield Road, Ashford, Kent, TN23 4ES**

### **Purpose of the Report**

1. The report advises Members of a licence application under the provisions of the Licensing Act 2003.

Application type:    **Application from an existing licence holder to grant the variation to the premises licence.**

Applicant:            **Murco Petroleum Limited**

Premises:            **Murco Costcutter, Brookfield Road Service Station, Brookfield Road, Ashford, Kent, TN23 4ES**

### **Issue to be Decided**

2. Members are asked to determine whether to grant the variation to the premises licence.

### **Background**

#### ***The Licensing Objectives***

3. The licensing authority must carry out its functions under the Licensing Act 2003 with a view to promoting the licensing objectives namely, the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm (LA 2003, s4 (1)).

#### ***Application details***

4. The application is made by an existing licence holder to vary a premises licence.
5. See Appendix A for the Application to vary a Premises Licence. The application has been made in the proper manner. The application form includes a copy of the current premises licence.
6. In respect to the variation, representations have been received hence the determination coming before Members.

#### ***Additional steps***

7. The applicant states within section P of the application form the additional steps they intend to take in order to promote the four licensing objectives if the proposed variation is granted.
8. The conditions put forward by the Licensing Manager as taken from section P of the application form are as given within Appendix E. Note it is the responsibility

of the Licensing Authority to prepare conditions that are “consistent” with the operating schedule (s.18).

9. The conditions were passed to the applicant for comment on Friday 4<sup>th</sup> September for comment.

### ***Representations from Responsible Authorities***

10. A representation was received from the Environmental Control Officer (Appendix C).
11. The Environmental Control Officer is concerned about the applicant being able to successfully promote the prevention of public nuisance objective. This is in respect of the amount of noise likely to be generated by car doors slamming, vehicle movement and revving of engines.
12. The representation also details the fact that planning permission was refused for the premises to operate after 23:00. However members will be aware that whether planning permission has been granted is not relevant to decisions made under the Licensing Act 2003. The decision can only be made solely on the four licensing objectives.

### ***Representations from Interested Parties***

13. One party has made a representation. A copy of the email is contained in Appendix D.
14. The representation is from the Ward Member for the Borough.
15. The representation concerns the prevention of public nuisance objection in relation to the residential nature of the area and disturbances from licensed premises in the area. The email also raises concern regarding the protection of children from harm in relation to the ease of access to alcohol.
16. Members may wish to seek more information from the Ward Member at the Hearing.
17. Under section 35(5) of the Licensing Act 2003, representations are relevant if they are about the likely effect of the grant of the licence on the promotion of the licensing objectives and (subsection 6) are made by an interested party or responsible authority within the prescribed period, are not withdrawn or, in the opinion of the licensing authority, frivolous or vexatious.
18. The prescribed period for the receipt of such representations in this case is, by Regulation 22(b) of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 "during a period of 28 consecutive days starting on the day after the day on which the application to which it relates was given to the authority by the applicant". In this case the application was given to the authority on 10<sup>th</sup> February 2011 and the last date for receipt of relevant representations was therefore 10<sup>th</sup> March 2011.

### ***Relevant premises history***

19. The premises is a service station located in Brookfield Road on a busy main road, in a residential area. See Appendix B for a location map of the premises and the surrounding area.
20. A Justices' Off Licence was first issued to the premises in January 2005 and this was converted to a premises licence in November 2005.
21. The current licence permits the off sales of alcohol Sunday 10:00 – 22:30 and Monday to Saturday 08:00 – 23:00. With restrictions on Christmas Day and Good Friday (as a result on the conversion of embedded conditions).
22. The variation application requests the addition of late night refreshment from 23:00 – 05:00, seven days a week and an increase in the hours for the sale of alcohol to 24 hours a day, seven days a week.

### **Options**

#### ***General***

23. Members attention is drawn to the following matters:
  - All applications are to be considered on their merits as well as against the relevant policy and statutory framework.
  - Due regard should be given to the provisions of the Human Rights Act 1998, Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 and Section 17 of the Crime and Disorder Act 1998 and, so far as possible, reflect local crime prevention strategies.
  - The operating schedule forms part of the completed application form for a premises licence. The operating schedule should include information, which is necessary to enable any responsible authority or interested party to assess whether the steps to be taken to promote licensing objectives are satisfactory.
  - The licensing authority may not impose any conditions unless its discretion has been engaged following the making of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions due to the representations raised. It may then only impose such conditions as are necessary to promote the licensing objectives arising out of the consideration of the representations. However, in order to minimise problems and the necessity for hearings, it would be sensible for applicants to consult with responsible authorities when schedules are being prepared. This would allow for proper liaison before representations prove necessary.
  - Where problems have occurred, the application for the new licence or certificate will afford an opportunity for responsible authorities and interested parties to raise the issue through representations and for conditions addressing any nuisance previously caused to be attached

following a hearing where necessary. The views of local residents will be important in establishing the extent of any history of problems.

- The conditions put forward within this report are suggested on the basis of:
  - information contained within the application form;
  - interested parties representations and
  - on those measures currently in existence.
- The 2003 Act requires licensing authorities following receipt of relevant representations to make judgements about what constitutes public nuisance and what is necessary, in terms of conditions attached to specific premises licences to prevent it. It is therefore important that in considering the promotion of this licensing objective, licensing authorities focus on impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.
- Public nuisance is not narrowly defined in the 2003 Act and retains its broad common law meaning for the Act's purposes. The prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.
- Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise may also prove necessary to address any disturbance anticipated as customers enter and leave the premises and therefore, in the immediate vicinity of the premises.
- In the context of preventing public nuisance, it is essential that conditions are focused on measures within the direct control of the licence holder. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, or premises management cannot be justified and will not serve to promote the licensing objectives in relation to the licensing activities carried on at the premises. Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in his own right. However, it would be perfectly reasonable for a licensing authority to impose a condition it considered necessary following relevant representations from an interested party that requires the licence holder to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living near-by to a peaceful night. After a licence has been granted or varied, a complaint relating to a

general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate.

- The Guidance states “the conditions that are necessary for the promotion of the licensing objectives should emerge initially from a prospective licensee’s risk assessment which should be undertaken by applicants or clubs before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule that it is proposed to take to promote the licensing objectives.”
- It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions, which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.

### ***Decision options***

24. In addition to those matters outlined in the applications operating schedule if members are minded to grant the application they may wish to consider the following conditions:

#### ***Prevention of Public Nuisance***

- a) The Licence Holder shall display prominent, clear notices at the exit, requesting customers to respect the needs of local residents and leave the premises and the area quietly.
- b) The license holder shall receive and respond to complaints.

#### ***Prevention of Crime & Disorder***

- a) The Licence Holder will liaise with the Police and other relevant authorities in connection with the operation of the licence and the prevention of crime & disorder licensing objective.

### **Legal options open to members**

25. Members may grant the application with no modifications to the conditions to the licence, modify the conditions of the licence or reject the whole or part of the application.

26. It is important to note that the application before members concerns the addition of certain forms or regulated entertainment, a change in the plan attached to the licence and the extension of hours to 23:00 – 06:00.

### **Consultation**

27. All relevant parties have followed the consultation procedures required under the Licensing Act 2003.

## **Implications Assessment**

28. The decision should be made with regard to the Secretary of State's Guidance and the Council's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from either the Guidance or the policy clear and cogent reasons must be given. Members should be aware that if such a departure is made the risk of appeal / challenge is increased.

## **Human Rights**

29. While all Convention Rights must be considered, those which are of particular relevance to the application are:

- Article 8 - Right to respect for private and family life
- Article 1 of the First Protocol - Protection of Property
- Article 10 – Freedom of Expression

The full text of each Article is given in the attached Appendix F.

## **Handling**

30. The timings for handling the application are set out in the Licensing Act 2003 and related regulations.

## **Conclusion**

31. Members must ensure that the application is considered on its merits, as well as against the relevant guidance, policy and statutory framework.

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**APPENDIX E**  
**CONDITIONS CONSISTENT WITH THE APPLICANTS OPERATING SCHEDULE**

**General - All four Licensing Objectives**

1. The Licence Holder will ensure that an alarm system is fitted and working in the premises.
2. The Licence Holder will ensure that staff are trained in the four licensing objectives.
3. The Licence Holder will ensure that CCTV equipment, with a recording facility, is installed and working on the premises and will be in operation throughout trading hours and that access to the system will be provided to the police and local authority officers at their request.
4. The Licence Holder will through the operation of a recognised 'proof of age' scheme ensure that any one who appears to be under 21 and is attempting to buy alcohol will be asked to provide adequate and accepted proof of age. Accepted valid forms of identification are photo driving licence, passport, home office approved ID cards displaying the PASS hologram.
5. The Licence Holder will ensure that a record of all refusals for the sale of alcohol is maintained.
6. The Licence Holder will ensure that all spirits are located behind the counter.
7. The Licence Holder will ensure that appropriate signage is displayed at the premises.

**The Prevention of Crime & Disorder**

See conditions under General.

**Public safety**

See conditions under General.

**Prevention of public nuisance**

See conditions under General.

**The Protection of Children from Harm**

See conditions under General.

## **APPENDIX F – SUMMARY OF THE RELEVANT HUMAN RIGHTS**

### **Article 8**

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.

### **Article 1 of the First Protocol**

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.

### **Article 10**

3. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
4. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.