

REPORT TO LICENSING & APPEALS SUB-COMMITTEE

Agenda Item **3**

Hearing Date: 23rd September 2013

Contact Officer: Ruth Boam – 01283 595716

DETERMINATION OF AN APPLICATION FOR A PREMISES LICENCE

Applicants Name	Dilip Enterprises Limited
Premises Name	Costcutter
Address	Etwell Road, Mickleover, DE3 0DN

1. PURPOSE

To determine an application for a premise licence received by this Authority on the 9th July 2013 from Dilip Enterprises Limited. (**application attached at Appendix 1**).

2. BACKGROUND

- 2.1 The applicant is seeking a new premises licence to permit the Sale by Retail of Alcohol, and Late Night Refreshment. The full details are indicated below in paragraph 3.

3. APPLICATION DETAILS

- 3.1 The applicant requests the Licensing Authority to permit the following:

Activity	Days	Times
Sale by Retail of Alcohol for consumption off the premises only	Monday to Sunday	24 hours
Late Night Refreshment	Monday to Sunday	23:00 to 05:00
Hours premises to remain open to members of the public	Monday to Sunday	24 hours

- 3.2 The steps the applicant intends to take to promote all four licensing objectives can be seen at page 13 and 14 of the report.

4. CONSULTATION RESPONSES

Derbyshire Constabulary -

Representation received during the 28 day consultation period. Full details can be found in **Appendix 2**.

Upon receiving this representation it was requested by the applicant that we defer the determination of this application in order to give them more time to

provide trading figures to satisfy Derbyshire Constabulary that they were able to comply with s176 of the Licensing Act 2003. It was decided that this was permitted by section 11 of the Licensing Act 2003 (Hearings Regulations) 2005, and that it was in the public interest to do so.

The applicant also agreed conditions during the consultation period with Trading Standards, although Trading Standards did not submit a formal representation.

5. AGREEMENT BETWEEN PARTIES

- 5.1 The applicant provided trading figures that satisfied Derbyshire Constabulary, and they have withdrawn this part of their representation. The applicant has agreed to have the conditions requested by Derbyshire Police and Trading Standards added to their licence. (**Appendix 3**)
- 5.3 All parties have agreed to dispense with the need to hold a hearing.

6. DETERMINATION

- 6.1 The Licensing Act's scheme of delegation does not permit Officers to determine an application that has received a representation, even when all parties agree to dispense with the need to hold a hearing. The power to grant licences in these circumstances remains with the Licensing and Appeals Sub-Committee.
- 6.2 As all parties have agreed to dispense with a hearing, there is no requirement to hear evidence, and Members are asked to grant the licence subject to such conditions contained in the operating schedule, appendix 3 to this report, and any mandatory conditions required under the Licensing Act 2003.

7. RIGHT OF APPEAL

- 7.1 The applicant or persons making representation have a right of appeal against the decision of the Licensing Authority.

APPENDICES

- 1. Application for a premises licence to be granted under the Licensing Act 2003 – pages 3 to 20.
- 2. Derbyshire Constabulary representation regarding application – pages 21 to 26.
- 3. Agreement to withdraw s176 part of representation and add conditions – pages 27 to 31.

EXP 06/08/13

APPENDIX 1



South Derbyshire
Application for a premises licence
Licensing Act 2003

For help contact
licensing@south-derbys.gov.uk
Telephone: 01283 221000

* required information

Section 1 of 19

You can save the form at any time and resume it later. You do not need to be logged in when you resume.

System reference

Not Currently In Use

This is the unique reference for this application generated by the system.

Your reference

You can put what you want here to help you track applications if you make lots of them. It is passed to the authority.

Are you an agent acting on behalf of the applicant?

☒ Yes ☐ No

Put "no" if you are applying on your own behalf or on behalf of a business you own or work for.

Applicant Details

* First name

SIVAPALAN

* Family name

KRISHANAND

* E-mail

Main telephone number

Include country code.

Other telephone number

☐ Indicate here if the applicant would prefer not to be contacted by telephone

Is the applicant:

☒ Applying as a business or organisation, including as a sole trader
☐ Applying as an individual

A sole trader is a business owned by one person without any special legal structure. Applying as an individual means the applicant is applying so the applicant can be employed, or for some other personal reason, such as following a hobby.

Applicant Business

* Is the applicant's business registered in the UK with Companies House?

☒ Yes ☐ No

* Registration number

04864030

* Business name

DILIP ENTERPRISES LTD

If the applicant's business is registered, use its registered name.

* VAT number

NONE

Put "none" if the applicant is not registered for VAT.

* Legal status

Private Limited Company

Continued from previous page...

* Applicant's position in the business

DIRECTOR

Home country

United Kingdom

The country where the applicant's headquarters are.

Registered Address

Address registered with Companies House.

* Building number or name

17

* Street

CLAREMONT AVE

District

BRAMCOTE

* City or town

NOTTINGHAM

County or administrative area

* Postcode

NG9 3DG

* Country

United Kingdom

Agent Details

* First name

GEMMA

* Family name

GOODWIN

* E-mail

Main telephone number

Other telephone number

Include country code.

☐ Indicate here if you would prefer not to be contacted by telephone

Are you:

☒ An agent that is a business or organisation, including a sole trader

A sole trader is a business owned by one person without any special legal structure.

☐ A private individual acting as an agent

Agent Business

* Is your business registered in the UK with Companies House?

☒ Yes

☐ No

* Registration number

05822732

* Business name

LICENSING MATTERS LTD

If your business is registered, use its registered name.

* VAT number

- NONE

Put "none" if you are not registered for VAT.

* Legal status

Private Limited Company

Continued from previous page...

* Your position in the business

Home country

The country where the headquarters of your business is located.

Agent Registered Address

Address registered with Companies House.

* Building number or name

* Street

District

* City or town

County or administrative area

* Postcode

* Country

Section 2 of 19

PREMISES DETAILS

I/we, as named in section 1, apply for a premises licence under section 17 of the Licensing Act 2003 for the premises described in section 2 below (the premises) and I/we are making this application to you as the relevant licensing authority in accordance with section 12 of the Licensing Act 2003.

Premises Address

Are you able to provide a postal address, OS map reference or description of the premises?

☒ Address ☐ OS map reference ☐ Description

Postal Address Of Premises

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

Further Details

Telephone number

Non-domestic rateable value of premises (£)

Section 3 of 19

APPLICATION DETAILS

In what capacity are you applying for the premises licence?

- ☐ An individual or individuals
- ☒ A limited company
- ☐ A partnership
- ☐ An unincorporated association
- ☐ A recognised club
- ☐ A charity
- ☐ The proprietor of an educational establishment
- ☐ A health service body
- ☐ A person who is registered under part 2 of the Care Standards Act 2000 (c14) in respect of an independent hospital in Wales
- ☐ A person who is registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of the carrying on of a regulated activity (within the meaning of that Part) in an independent hospital in England
- ☐ The chief officer of police of a police force in England and Wales
- ☐ Other (for example a statutory corporation)

Confirm The Following

- ☒ I am carrying on or proposing to carry on a business which involves the use of the premises for licensable activities
- ☐ I am making the application pursuant to a statutory function
- ☐ I am making the application pursuant to a function discharged by virtue of Her Majesty's prerogative

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NON INDIVIDUAL APPLICANTS

Provide name and registered address of applicant in full. Where appropriate give any registered number. In the case of a partnership or other joint venture (other than a body corporate), give the name and address of each party concerned.

Non Individual Applicant's Name

Name

Details

Registered number (where applicable)

Description of applicant (for example partnership, company, unincorporated association etc)

Continued from previous page...

LIMITED COMPANY

Address

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

Contact Details

E-mail

Telephone number

Other telephone number

Add another applicant

Section 5 of 19

OPERATING SCHEDULE

When do you want the premises licence to start? / /
dd mm yyyy

If you wish the licence to be valid only for a limited period, when do you want it to end / /
dd mm yyyy

Provide a general description of the premises

For example the type of premises, its general situation and layout and any other information which could be relevant to the licensing objectives. Where your application includes off-supplies of alcohol and you intend to provide a place for consumption of these off-supplies you must include a description of where the place will be and its proximity to the premises.

THE PREMISES IS A CONVENIENCE STORE SITUATED AT A GARAGE (AT PRESENT A TOTAL GARAGE), WHICH WILL BE REFITTED AS A COSTCUTTER BRANDED STORE & BP GARAGE.

If 5,000 or more people are expected to attend the premises at any one time, state the number expected to attend

Continued from previous page...

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PROVISION OF PLAYS

Will you be providing plays?

☐ Yes ☒ No

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PROVISION OF FILMS

Will you be providing films?

☐ Yes ☒ No

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PROVISION OF INDOOR SPORTING EVENTS

Will you be providing indoor sporting events?

☐ Yes ☒ No

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PROVISION OF BOXING OR WRESTLING ENTERTAINMENTS

Will you be providing boxing or wrestling entertainments?

☐ Yes ☒ No

Section 10 of 19

PROVISION OF LIVE MUSIC

Will you be providing live music?

☐ Yes ☒ No

Section 11 of 19

PROVISION OF RECORDED MUSIC

Will you be providing recorded music?

☐ Yes ☒ No

Section 12 of 19

PROVISION OF PERFORMANCES OF DANCE

Will you be providing performances of dance?

☐ Yes ☒ No

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PROVISION OF ANYTHING OF A SIMILAR DESCRIPTION TO LIVE MUSIC, RECORDED MUSIC OR PERFORMANCES OF DANCE

Will you be providing anything similar to live music, recorded music or performances of dance?

☐ Yes ☒ No

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LATE NIGHT REFRESHMENT

Will you be providing late night refreshment?

Continued from previous page...

☒ Yes

☐ No

Standard Days And Timings

MONDAY

Start 23:00

End 05:00

Start

End

Give timings in 24 hour clock.
(e.g., 16:00) and only give details for the days
of the week when you intend the premises
to be used for the activity.

TUESDAY

Start 23:00

End 05:00

Start

End

WEDNESDAY

Start 23:00

End 05:00

Start

End

THURSDAY

Start 23:00

End 05:00

Start

End

FRIDAY

Start 23:00

End 05:00

Start

End

SATURDAY

Start 23:00

End 05:00

Start

End

SUNDAY

Start 23:00

End 05:00

Start

End

Will the provision of late night refreshment take place indoors or outdoors or both?

☒ Indoors

☐ Outdoors

☐ Both

Where taking place in a building or other structure tick as appropriate. Indoors may include a tent.

State type of activity to be authorised, if not already stated, and give relevant further details, for example (but not exclusively) whether or not music will be amplified or unamplified.

State any seasonal variations

For example (but not exclusively) where the activity will occur on additional days during the summer months.

Continued from previous page...

Non-standard timings. Where the premises will be used for the supply of late night refreshments at different times from those listed in the column on the left, list below

For example (but not exclusively), where you wish the activity to go on longer on a particular day e.g. Christmas Eve.

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SUPPLY OF ALCOHOL

Will you be selling or supplying alcohol?

☒ Yes ☐ No

Standard Days And Timings

MONDAY

Start 00:00

End 23:59

Start

End

Give timings in 24 hour clock.
(e.g., 16:00) and only give details for the days
of the week when you intend the premises
to be used for the activity.

TUESDAY

Start 00:00

End 23:59

Start

End

WEDNESDAY

Start 00:00

End 23:59

Start

End

THURSDAY

Start 00:00

End 23:59

Start

End

FRIDAY

Start 00:00

End 23:59

Start

End

SATURDAY

Start 00:00

End 23:59

Start

End

Continued from previous page...

SUNDAY

Start 00:00

End 23:59

Start

End

Will the sale of alcohol be for consumption:

- ☐ On the premises ☒ Off the premises ☐ Both

If the sale of alcohol is for consumption on the premises select on, if the sale of alcohol is for consumption away from the premises select off. If the sale of alcohol is for consumption on the premises and away from the premises select both.

State any seasonal variations

For example (but not exclusively) where the activity will occur on additional days during the summer months.

Non-standard timings. Where the premises will be used for the supply of alcohol at different times from those listed in the column on the left, list below

For example (but not exclusively), where you wish the activity to go on longer on a particular day e.g. Christmas Eve.

State the name and details of the individual whom you wish to specify on the licence as premises supervisor

Name

First name

Family name

Enter the contact's address

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

Continued from previous page...

Personal Licence number
(if known)

PSL 0828

Issuing licensing authority
(if known)

EREWASH COUNCIL

PROPOSED DESIGNATED PREMISES SUPERVISOR CONSENT

How will the consent form of the proposed designated premises supervisor be supplied to the authority?

- ☐ Electronically, by the proposed designated premises supervisor
- ☒ As an attachment to this application

Reference number for consent form (if known)

If the consent form is already submitted, ask the proposed designated premises supervisor for its 'system reference' or 'your reference'.

Section 16 of 19

ADULT ENTERTAINMENT

Highlight any adult entertainment or services, activities, or other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children

Give information about anything intended to occur at the premises or ancillary to the use of the premises which may give rise to concern in respect of children, regardless of whether you intend children to have access to the premises, for example (but not exclusively) nudity or semi-nudity, films for restricted age groups etc gambling machines etc.

NONE

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HOURS PREMISES ARE OPEN TO THE PUBLIC

Standard Days And Timings

MONDAY

Start 00:00

End 23:59

Start

End

Give timings in 24 hour clock.
(e.g., 16:00) and only give details for the days of the week when you intend the premises to be used for the activity.

TUESDAY

Start 00:00

End 23:59

Start

End

WEDNESDAY

Start 00:00

End 23:59

Start

End

Continued from previous page...

THURSDAY

Start 00:00

End 23:59

Start

End

FRIDAY

Start 00:00

End 23:59

Start

End

SATURDAY

Start 00:00

End 23:59

Start

End

SUNDAY

Start 00:00

End 23:59

Start

End

State any seasonal variations

For example (but not exclusively) where the activity will occur on additional days during the summer months.

Non standard timings. Where you intend to use the premises to be open to the members and guests at different times from those listed in the column on the left, list below

For example (but not exclusively), where you wish the activity to go on longer on a particular day e.g. Christmas Eve.

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LICENSING OBJECTIVES

Describe the steps you intend to take to promote the four licensing objectives:

a) General – all four licensing objectives (b,c,d,e)

List here steps you will take to promote all four licensing objectives together.

THE PREMISES WILL BE MANAGED IN LINE WITH THE FOUR LICENSING OBJECTIVES & GOVERNMENT LEGISLATION.

b) The prevention of crime and disorder

1) THE PREMISES HAS COMPREHENSIVE CCTV COVERAGE. THE SYSTEM RECORDS & THE DATA IS KEPT FOR A MINIMUM OF

Continued from previous page...

28 DAYS. DOWNLOADS WILL BE MADE AVAILABLE TO THE RA'S UPON REQUEST.

2) FIGURES DEMONSTRATING PRIMARY USE WILL BE SERVED UPON THE LICENSING AUTHORITY AFTER 12 MONTHS FROM THE GRANT OF THE APPLICATION.

3) THE PREMISES WILL MAINTAIN A REFUSALS & INCIDENTS REGISTER.

c) Public safety

1) BETWEEN THE HOURS OF MIDNIGHT & 5AM THERE WILL BE A MINIMUM OF 2 STAFF ON DUTY WHEN THE PREMISES ARE OPEN TO THE PUBLIC, OTHERWISE THE MAIN ENTRANCE WILL BE CLOSED TO CUSTOMERS & ALL SALES WILL TAKE PLACE FROM THE SERVING HATCH.

d) The prevention of public nuisance

1) A BIN WILL BE LOCATED OUTSIDE THE PREMISES.

e) The protection of children from harm

1) ALL STAFF WILL BE TRAINED BEFORE MAKING SALES OF ALCOHOL, THE TRAINING WILL BE DOCUMENTED & MADE AVAILABLE TO THE AUTHORITIES UPON REQUEST.

2) THE PREMISES WILL OPERATE A CHALLENGE 21 POLICY. ANY PERSON WHO APPEARS TO BE UNDER THE AGE OF 21 WILL BE ASKED FOR ID TO PROVE THEY ARE OVER 18.

3) THE ONLY TYPES OF ID TO BE ACCEPTED ARE PASSPORTS, PHOTO-CARD DRIVING LICENCES, & GOVERNMENT APPROVED PASS CARDS.

Section 19 of 19

PAYMENT DETAILS

This fee must be paid to the authority. If you complete the application online, you must pay it by debit or credit card.

Premises Licence Fees are determined by the non-domestic rateable value of the premises.

To find out a premises non domestic rateable value go to the Valuation Office Agency site at http://www.voa.gov.uk/business_rates/index.htm

Band A - No RV to £4300 £100.00

Band B - £4301 to £33000 £190.00

Band C - £33001 to £87000 £315.00

Band D - £87001 to £125000 £450.00*

Band E - £125001 and over £635.00*

*If the premises rateable value is in Bands D or E and the premises is primarily used for the consumption of alcohol on the premises then you are required to pay a higher fee

Band D - £87001 to £125000 £900.00

Band E - £125001 and over £1,905.00

There is an exemption from the payment of fees in relation to the provision of regulated entertainment at church halls, chapel halls or premises of a similar nature, village halls, parish or community halls, or other premises of a similar nature. The costs associated with these licences will be met by central Government. If, however, the licence also authorises the use of the premises for the supply of alcohol or the provision of late night refreshment, a fee will be required.

Schools and sixth form colleges are exempt from the fees associated with the authorisation of regulated entertainment where the entertainment is provided by and at the school or college and for the purposes of the school or college.

If you operate a large event you are subject to ADDITIONAL fees based upon the number in attendance at any one time

Capacity 5000-9999 £1,000.00

Capacity 10000 -14999 £2,000.00

Capacity 15000-19999 £4,000.00

Capacity 20000-29999 £8,000.00

Continued from previous page...

Capacity 30000-39999 £16,000.00
Capacity 40000-49999 £24,000.00
Capacity 50000-59999 £32,000.00
Capacity 60000-69999 £40,000.00
Capacity 70000-79999 £48,000.00
Capacity 80000-89999 £56,000.00
Capacity 90000 and over £64,000.00

* Fee amount (£)

ATTACHMENTS

AUTHORITY POSTAL ADDRESS

Address

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

DECLARATION

* I/we understand it is an offence, liable on conviction to a fine up to level 5 on the standard scale, under section 158 of the licensing act 2003, to make a false statement in or in connection with this application.

* The 28 days target processing period relates only to the initial application. Should a Responsible Authority or Interested Party submit a representation then this period will be extended

☐ Ticking this box indicates you have read and understood the above declaration

This section should be completed by the applicant, unless you answered "Yes" to the question "Are you an agent acting on behalf of the applicant?"

* Full name

* Capacity

Date (dd/mm/yyyy)

One you're finished you need to do the following:

1. Save this form to your computer by clicking to file/save as...

2. Go back to <https://www.gov.uk/apply-for-a-licence/premises-licence/south-derbyshire/apply-1> to upload this file and continue with your application

Don't forget to make sure you have all your supporting documentation to hand.

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and any premises licence to be granted or varied in respect of this application made by

DILIP ENTERPRISES LTD
[name of applicant]

concerning the supply of alcohol at

COSTCUTTER (BP)
ETWELL ROAD
MICKLEOVER
DERBY
DE3 0DN

[name and address of premises to which application relates]

I also confirm that I am applying for, intend to apply for or currently hold a personal licence, details of which I set out below.

Personal licence number

PSL 0828
[insert personal licence number, if any]

Personal licence issuing authority

EREWASH
[insert name and address and telephone number of personal licence issuing authority, if any]

Signed

Name (please print)

Date

9/7/13

Consent of individual to being specified as premises supervisor

[full name of prospective premises supervisor]

of

[home address of prospective premises supervisor]

hereby confirm that I give my consent to be specified as the designated premises supervisor in relation to the application for

Premises Licence Grant

[type of application]

by _____

DILIP ENTERPRISES LTD
[name of applicant]

relating to a premises licence TBA
[number of existing licence, if any]

for COSTCUTTER (BP)
ETWELL ROAD

MICKLEOVER
DERBY
DE3 0DN

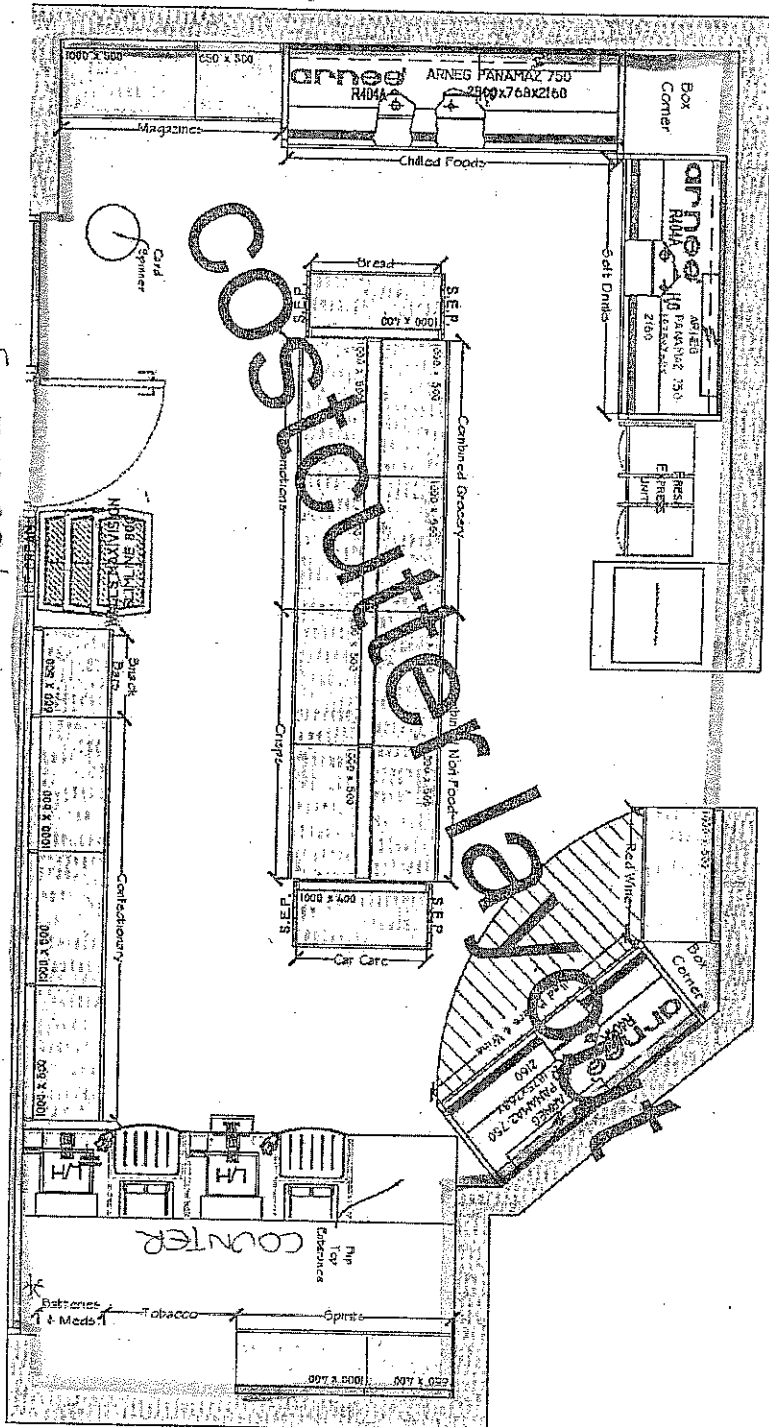
[name and address of premises to which the application relates]

WIDTH 4.915M

LENGTH 9.865M

* FIRE EXTINGUISHER

ENTRANCE / EXIT



Store Room

Note: Any items shown on the plan that are not subject to the requirements of the Licensing Act 2003 plan regulations are subject to change at any time

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Tel: 101
Text Relay: 18001 101
www.derbyshire.police.uk

Contact: PC 2766
MORLEY
Direct Tel: 0300 122 5409

Ext:
Fax:
Our ref: PID / 7670

Your ref: Cost Cutter

Monday, 05 August
2013

The Licensing Manager
South Derbyshire Council,
Civic Offices,
Civic Way,
Swadlincote,
Derbyshire,
DE11 0AH

BY E-MAIL & POST

Dear Madam,

LICENSING ACT 2003 APPLICATION:

Application for Premises Licence –

COSTCUTTER (BP), Etwall Road, Mickleover, Derby, DE3 0DN

With reference to the above application, please take this letter as formal notification that it is the intention of the Police to make representation against this application on the grounds that in its current form it undermines the Licensing objectives as indicated below:

1. The Prevention of Crime & Disorder X
2. Public Safety
3. The prevention of Public Nuisance
4. The protection of children from harm

Further explanation is given at appendix A attached.

Yours faithfully,

PC 2766 MORLEY
'D' Division Licensing Department
St. Mary's Wharf Police Station
DERBY
01332 613036 (760 3036)
Richard.morley.2766@derbyshire.pnn.police.uk



PLEASE NOTE:

THE INFORMATION CONTAINED IN **APPENDIX A** IS FOR THE ATTENTION OF THE LICENSING AUTHORITY / POLICE AND APPLICANT ONLY AT THIS STAGE.

DISCLOSURE TO OTHER PARTIES PRIOR TO HEARING MAY PREJUDICE ANY ALTERNATIVE DISPUTE RESOLUTION PROCESS AND ANY SUBSEQUENT COMMITTEE HEARING / COURT

APPENDIX 'A'**RE: COSTCUTTER**

The application for Costcutter, Etwall Road, Mickleover, Derby was received by the Police on 09/07/2013. The consultation period therefore ends on 05/08/2013.

The Chief Officer of Police makes this representation on the basis that should this application be granted in its current form, there is a likelihood that the Licensing Objectives will be undermined, namely; the prevention of crime and disorder.

It is submitted that this application does not demonstrate to the required standard that the primary use of the premises is that of a convenience store and not that of a garage.

The Licensing Authority will no doubt be aware that the definition of a 'garage' in the context of the Licensing Act 2003 is contained within S.176. The Authority will also be aware that unless the applicant can demonstrate, when requested to do so, that the proposed premises is not primarily used as a 'garage', the application for a premises licence *may* be rejected. If primary use is determined at a hearing of the Licensing Sub-Committee, the hearing may adjourn for further information to be provided by the applicant.

The above view is submitted in accordance with the Guidance issued at S.182 of the Licensing Act 2003 at paragraphs 5.21-5.23 and the case law from the *Green* and *Goodwin* cases (recently affirmed in the *Murco Petroleum* case).

I can confirm that the Police have been in discussions with the applicant's agent in relation to the data submitted with the application in an attempt to show the intensity of use of the premises by customers. The Licensing Authority should note that the data that was submitted with the application was projected data based upon the sales figures from another site. The chief officer of police therefore requested that further data be submitted indicating the intensity of use at the actual premises to which this application relates.

On 01/08/2013, the applicant's agent submitted further data compiled as a result of a survey undertaken at the store. This data indicated that in a 14 day period more customers used the premises solely for fuel (2,158) than for the shop only (1,514). Customers using the premises for shop and fuel products numbered 1,322. The agent states that the shop only and the shop and fuel figures should be added together to demonstrate that the premises is not primarily a garage.

It is the view of the chief officer of police that it cannot be said that a customer using the premises for fuel and shop products is primarily using the premises for one product or the other. Therefore, this figure should largely be ignored other than to indicate the mixed use of the premises.

It is therefore the view of the chief officer of police that the data supplied does not show the intensity of use of the premises in favour of non-excluded products.

It is the view of the Police that the Licensing Authority should reject this application on the basis of primary use not having been proven. In any other event, this correspondence should be regarded as a relevant representation and be considered at a hearing of the Licensing Sub-Committee.

You will be aware that the Licensing Authority must grant an application for a premises licence where the requirements of Section 17 of the Licensing Act 2003 ('the 2003 Act') have been complied with and where there have been no 'relevant representations' made in respect of the application. However, it is the view of the Police that the decision as to whether primary use of the premises as a garage has been established is not within a decision that the Licensing Authority can make as Section 18(3) of the 2003 Act has been invoked.

Section 18(3)(a) of the 2003 Act states that the Authority must hold a hearing to consider the representation unless each person has agreed that a hearing is unnecessary.

Section 18(6) of the 2003 Act states that 'relevant representations' means representations which are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives.

It has been submitted above that, given the data supplied by the agent of the applicant, primary use has not been established. It is our view that as primary use has not been established, the premises would be in a position that offences under Section 136 of the 2003 Act would be committed immediately after the grant of the licence when licensable activities were carried on.

In the case of *R (on the application of) Murco Petroleum Limited v Bristol City Council* [2010] EWHC 1992 (Admin), Mr Justice Cranston states "If the premises were primarily a garage and so were excluded premises under Section 176, their use for the sale of alcohol would be unlawful, thus also engaging the crime prevention objective." [para. 27].

It is clear to the chief officer of police, therefore, that where primary use has not been demonstrated, and it is the position of the Police that in this case it has not, then the unlawful sales of alcohol at premises so excluded would be a relevant representation relating to the likely effect of the grant of the premises licence.

I would therefore reiterate that this representation is a relevant representation as required by statute as it relates to the likely effect on the crime prevention objective. The reasons for this are outlined above and relate to the criminal offences that would occur should the premises operate as a garage. This position is supported by the case law on the subject and cannot be ignored by the Authority. The data supplied by the applicant does not show the required intensity of use by customers.

Pending any further data that may be submitted by the applicant, it is submitted that the representation must be regarded as a relevant representation as detailed in Section 18(6) of the Licensing Act 2003.

Please therefore take this email as formal notification of a representation being made to the application for a new premises licence for Costcutter, Etwall Road, Mickleover, Derby.

Should it be the decision of the Licensing Sub-committee to ratify the application and therefore elect to grant the premises licence the Licensing Authority may wish to consider the attached conditions being applied to the premises licence.

Conditions for consideration.

1. A 'Challenge 25' age verification policy will be employed at the premise with regards to the sale of alcohol and other age restricted products.
2. Clear signage in relation to the 'Challenge 25' age policy operated at the premises will be clearly displayed.
3. There shall be signage in relation to the age policy in all areas where alcohol is displayed for sale and at the point of sale; this is to include the **'night pay hatch'**.
4. Any person who appears to be under the age of 25 years of age will be required to provide suitable proof of age before any alcohol is sold to them. When the **'night pay hatch'** is in use the identification must be requested and recorded prior to the operator selecting the required alcohol from display.
5. This proof of age will be in the form of;
 - Photo driving licence
 - Current passport
 - Ministry of Defence identity card or
 - Government approved 'PASS' identification card scheme
6. Any requests / refusals in relation to the sale of alcohol will be entered in the refusals book or register kept for this purpose. These registers shall be kept on the premises for a minimum period of 1 year and will be produced upon request to a Police Officer or person as detailed within Section 13 of the licensing Act 2003.
7. Full training is to be provided by the Designated Premises Supervisor or nominated deputy to all staff involved in the sale of alcohol, on commencement of employment relating to all age-restricted products sold and any system or procedures they are expected to follow in the course of dealing with these goods. This training shall include the timings that the **'night pay hatch'** is in operation.

8. Refresher training will be provided to those employees referred to in paragraph 7 at regular intervals (At least once every six months). Written records detailing the training will be kept on the premises for production to a constable or an authorised person as detailed within Section 13 of the Licensing Act 2003 upon request. These records shall be retained on the premises for a minimum of 1 year.
9. Any authorisation to sell alcohol will be in writing and this will be kept on the premises at all times. This authorisation is to be signed by ALL staff and counter signed by the Designated Premises Supervisor.
10. The Premises Licence holder/Designated Premises Supervisor shall as far as possible ensure that no consumption of alcohol will be permitted within the immediate vicinity of the premises. Signage advising customers of this fact shall be displayed both at the point of sale and the main facade of the building.
11. The premises licence holder shall ensure that alcohol is stored at the premises in such a way that it is secured and that only authorised members of staff who are over the age of 16 have access to the alcohol stored. This condition shall not apply to the retail area of the licensed premises as edged red on the approved plan.
12. Where the premises licence holder employs, whether paid or unpaid, any person, involved in the sale or supply of alcohol, that person shall have received training that must include confirmation that the employee has read and understood any conditions attached to the premises licence.
13. The employee referred to in paragraph 12 above shall be aware of the requirements / policies of restricting any sale of alcohol to those persons aged 18 and over. This training shall be signed by the person providing the training and the trainee.
14. CCTV must be operated at all times when the premises are open to the public for licensable activities.
15. All CCTV recordings must be retained for a minimum of 31 days. These images must be available for viewing at any reasonable time (48hrs) upon request of a Police Officer or another authorised person as detailed within Section 13 of the Licensing Act 2003.
16. A CCTV system shall be installed and the recording system must be maintained in good working order and any faults repaired as soon as possible. The CCTV recording unit is to be kept secure, to be opened only by the premises licence holder or authorised, designated member of staff.
17. Installed CCTV cameras / monitors are to be positioned so as to ensure all areas to which the public have access are covered. This is to include the 'night pay hatch'.

18. All digital recordings to be made in real time, time lapse not to be used; the recordings will be fit for the purpose (for the avoidance of doubt, the image must be clear and in focus). The system must be able to export recorded images to a removable means such as a CD / DVD and have its own software that shall enable playback / review on site.
19. The DPS shall ensure that an incident log is maintained within the premises and details of all known incidents are recorded within the log. This log shall be kept on the premises for a period of not less than 12 months and be made available upon a request by a Police Officer or an authorised officer as detailed within Section 13 of the Licensing Act 2003.
20. Suitable and sufficient written risk assessments covering 'lone working' for the Venue shall be kept up to date and shall be made available upon a request by a Police Officer or an authorised officer as detailed within Section 13 of the Licensing Act 2003.
21. A nationally approved monitored alarm system covering the premises with panic button facility shall be installed, maintained and working at all times the premises are open.
22. ALL sales / transactions shall be conducted through the '**night pay hatch**' between the hours of 2200hrs – 0500hrs. No customers shall be allowed access to within the building between these hours.

APPENDIX 3

From: Broome Stewart
Sent: 04 September 2013 14:39
To: 'Gemma Goodwin'; Boam Ruth
Cc: Morley, Richard, 2766; Karen.Bailey@derbyshire.gov.uk
Subject: RE: Costcutter, Etwell Rd - Police Agreement

Good afternoon Gemma

When we extended the original timeframe to allow you to resolve the primary use issues with Derbyshire Constabulary your application was added to the agenda for the Sub-Committee due to take place on the 23rd September 2013.

It will not be possible to have Members determine your application prior to this date, but I can confirm that there is now no need for any parties to attend on this date, and your licence will be granted according to the conditions offered in your operating schedule, those agreed with Trading Standards and the Police, and any applicable mandatory conditions.

Your client will be permitted to trade from this day. I will confirm via email as soon as your determination has taken place.

If you have any questions, please do not hesitate to contact me.

Kind regards,

Stewart.

Stewart Broome
 Senior Licensing Officer
 South Derbyshire District Council
stewart.broome@south-derbys.gov.uk
 Direct Line: 01283 595935
 Fax: 01283 595853
www.south-derbys.gov.uk

From: Gemma Goodwin
Sent: 04 September 2013 12:56
To: Broome Stewart; Boam Ruth
Cc: Morley, Richard, 2766; Karen.Bailey@derbyshire.gov.uk
Subject: Costcutter, Etwell Rd - Police Agreement
Importance: High

Stewart/ Ruth,

Please find attached the conditions agreed with Trading Standards, & the agreement that has just been made with Police for conditions to be attached to the licence also. None of the agreed conditions between TS & Police conflict, but they do duplicate so I will leave it with you to choose the one that is most onerous.

On the primary use issue, we submitted the app without figures & offered a condition to produce them. Now that actual figures have been provided do you still want that condition on there?

I understand that the application will now just need rubber stamping by the committee?
 Please could you let me know when you have a date organised?

Many Thanks

27.

Gemma Goodwin

Licensing Matters Ltd
Time Technology Park
Blackburn Rd
Simonstone
BB12 7TW
01282 500322

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Licensing Matters Ltd is a limited company registered in England and Wales. Registered Number 05822732.
Registered office: Time Technology Park, Blackburn Road, Simonstone BB12 7TW.

From: Morley, Richard, 2766 [<mailto:Richard.Morley.2766@Derbyshire.PNN.Police.UK>]
Sent: 04 September 2013 11:41
To: 'Gemma Goodwin'
Subject: RE: condition re-word
Importance: High

Gemma,

Please find attached the amended proposed conditions following our telephone conversation today. I have made alterations as per our discussion. Should your client be in agreement with the conditions being attached to the premises licence I would be happy that the licensing objectives would be upheld and supported. Furthermore having read through the figures that you have provided I am satisfied that the issue surrounding Primary Use has been ratified.

Please confirm by return that the conditions are agreeable with your client and that you are happy for the requirement of a full hearing to be dispensed with.

Regards,

Rich Morley

Police Constable 2766
Licensing Enforcement Officer
Derbyshire Constabulary
'D' Division Licensing Team
Prime Parkway
Chester Green
DERBY
DE1 3AB
Tel: 0300 122 5409 (Internal 75 02766)
E-mail: richard.morley.2766@derbyshire.pnn.police.uk
Ext. E-mail: derby.licensing@derbyshire.pnn.police.uk
Int. Group E-mail: D.Licensing
Web: <http://www.derbyshire.police.uk>

28.

Conditions for consideration.

1. A 'Challenge 25' age verification policy will be employed at the premise with regards to the sale of alcohol.
2. Clear signage in relation to the 'Challenge 25' age policy operated at the premises will be clearly displayed.
3. There shall be signage in relation to the age policy in all areas where alcohol is displayed for sale and at the point of sale; this is to include the '**night pay hatch**'. They should also be displayed:-
 - all entry points to the premises,
 - where alcohol is displayed, and
 - all points of sale.
4. Any person who appears to be under the age of 25 years of age will be required to provide suitable proof of age (referred to in paragraph 5) before any alcohol is sold to them. Staff will be trained that when the '**night pay hatch**' is in use the identification must be requested and recorded prior to the operator selecting the required alcohol from display.
5. This proof of age will be in the form of;
 - Photo driving licence
 - Current passport
 - Ministry of Defence identity card or
 - Government approved 'PASS' identification card scheme
6. Any requests / refusals in relation to the sale of alcohol will be entered in the refusals book or register kept for this purpose. These registers shall be kept on the premises for a minimum period of 1 year and will be produced upon request to a Police Officer or person as detailed within Section 13 of the licensing Act 2003. At least weekly, the Designated Premises Supervisor (or deputy, authorised in writing) will:
 - examine the record and compare it against the normal operating pattern for the premises
 - indicate any action required following that examination if any
 - sign off/endorse the record to indicate the above points have been carried out
7. Full training is to be provided by the Designated Premises Supervisor or nominated deputy to all staff involved in the sale of alcohol, on commencement of employment relating to responsibilities under the Licensing Act 2003 and any system or procedures they are expected to follow in the course of dealing with these goods. This training shall include the timings that the '**night pay hatch**' is in operation.
8. Refresher training will be provided to those employees referred to in paragraph 7 at regular intervals (At least once every six months). Written records detailing the training will be kept on the premises for production to a constable or an authorised person as detailed within Section 13 of the

Licensing Act 2003 upon request. These records shall be retained on the premises for a minimum of 1 year.

9. Any authorisation to sell alcohol will be in writing and this will be kept on the premises at all times. This authorisation is to be signed by ALL staff and counter signed by the Designated Premises Supervisor.
10. The Premises Licence holder/Designated Premises Supervisor shall as far as possible ensure that no consumption of alcohol will be permitted within the immediate vicinity of the premises. Signage advising customers of this fact shall be displayed both at the point of sale and the main facade of the building.
11. The premises licence holder shall ensure that alcohol is stored at the premises in such a way that it is secured and that only authorised members of staff who are over the age of 16 have access to the alcohol stored. This condition shall not apply to the retail area of the licensed premises as edged red on the approved plan.
12. Where the premises licence holder employs, whether paid or unpaid, any person, involved in the sale or supply of alcohol, that person shall have received training that must include confirmation that the employee has read and understood any conditions attached to the premises licence.
13. The employee referred to in paragraph 12 above shall be aware of the requirements / policies of restricting any sale of alcohol to those persons aged 18 and over. This training shall be signed by the person providing the training and the trainee.
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17. Installed CCTV cameras / monitors are to be positioned so as to ensure all areas to which the public have access are covered. This is to include the **'night pay hatch'**.
18. All digital recordings to be made in real time, time lapse not to be used; the recordings will be fit for the purpose (for the avoidance of doubt, the image must be clear and in focus). The system must be able to export recorded images to a removable means such as a CD / DVD / Memory stick and have its own software that shall enable playback / review on site.
19. The DPS shall ensure that an incident log is maintained within the premises and details of all known incidents are recorded within the log. This log shall be

kept on the premises for a period of not less than 12 months and be made available upon a request by a Police Officer or an authorised officer as detailed within Section 13 of the Licensing Act 2003.

20. A nationally approved monitored alarm system covering the premises with panic button facility shall be installed, maintained and working at all times the premises are open.
21. ALL sales / transactions shall be conducted through the '**night pay hatch**' between the hours of 2300hrs – 0500hrs. No customers shall be allowed access to within the building between these hours.

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