

BROMSGROVE DISTRICT COUNCIL

**Licensing
Sub-Committee**

10th November 2014

**APPLICATION FOR A PREMISES LICENCE UNDER THE LICENSING ACT
2003**

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|----------------------------|---|
| Relevant Portfolio Holder | Councillor R. L. Dent |
| Portfolio Holder Consulted | No |
| Relevant Head of Service | Steve Jorden – Head of Worcestershire Regulatory Services. |
| Wards Affected | Uffdown |
| Non-Key Decision | |

1. SUMMARY OF PROPOSALS

- 1.1 An application under the Licensing Act 2004 [“the Act”] has been made by Moto Hospitality Limited to Bromsgrove District Council [“BDC”] the local licensing authority, for a Premises licence to: 1) sell alcohol off the premises, and 2) provide Late Night Refreshment at the MOTO Frankley Motorway Service Area [“MSA”] (South), M5 Motorway, Illey Lane, Birmingham, B32 4AR.

An objection to the application in relation to the sale of alcohol has been made by the local licensing authority and the matter is brought before the Licensing Sub-Committee for its consideration.

2. RECOMMENDATIONS

- 2.1 **The Sub-Committee is asked to RESOLVE**

whether or not, having regard to the Licensing Act 2003, the four licensing objectives; the Guidance issued under section 182 of the Act; BDC’s Statement of Licensing Policy, the applicant’s proposed Operating Schedule and relevant representations made by responsible authorities;

- 1) **To grant or refuse the application, as shown in the application form attached at Appendix 1 to the report.**
- 2) **If the Licensing Sub-Committee is minded to approve the application;**
 - a) **To attach relevant Mandatory Conditions; and**
 - b) **To consider, with due regard to the statutory licensing objectives and the relevant representation received, whether to attach any appropriate conditions.**

3. KEY ISSUES

Financial Implications

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- 3.1 The Statutory Fee of £635.00 has been paid, and the application has been duly advertised in accordance to the requirements of the Act. Should the application be refused by the Sub-committee, there is a right of appeal to Magistrates Court. The Magistrates may make an order for costs on an appeal.

Legal Implications: General

- 3.2 In considering the application, the Sub-Committee should have regard to the provisions of the Licensing Act 2003 and in considering a decision should also determine an application with regard to the National Guidance issued under s182 of the Act; BDC's Statement of Licensing Policy and the promotion of the licensing objectives which are:
- The Prevention of Crime and Disorder
 - Public Safety
 - The Prevention of Public Nuisance
 - The Protection of Children from Harm.
- 3.3 The Sub-Committee must also have regard to the representations made and the evidence presented at the hearing.
- 3.4 The Committee must take such of the following steps as it considers necessary to comply with the Act and for the promotion of the licensing objectives:
- (a) Grant the application as asked
 - (b) Modify or impose conditions on the licence, by altering or omitting or adding to them.
 - (c) Reject the application.
- 3.5 Any modification or imposition of conditions must be necessary to promote the licensing objectives.
- 3.6 The Human Rights Act 1998 incorporates human rights under the European Convention into English law. Article 6 provides that, in the determination of a person's civil rights, everyone is entitled to a fair and public hearing.

Legal Implications: Particular to the Application:

- 3.7 An application for a new Premises Licence for Moto Frankley Service Area (South), M5 Motorway, Illey Lane, Birmingham, B32 4AR made by Moto Hospitality Limited was received by BDC on the 19 September 2014 for the:

Sale of alcohol off the Premises: Monday to Sunday 07:00 – 23:00.
Late Night Refreshment: Monday to Sunday 23:00 – 05:00.

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A copy of the application is attached as **Appendix 1**.

- 3.8 A representation has been received from Bromsgrove District Council, in its capacity as the local licensing authority, on the basis that the premises would appear to be “excluded premises” as defined in s176 and accordingly should not be licensed for the sale of alcohol.

A copy of the representation is attached at **Appendix 2**

NOTE: No objection has been raised in relation to the granting of a premises licence for the provision of late night refreshment

3. 9 In relation to the sale of alcohol, s 176 Licensing Act 2003 provides:

(1) “No premises license, club certificate or temporary event notice has the effect to authorise the sale by retail or supply of alcohol on or from excluded premises.

(2) In this section “excluded premises” means— .

(a) premises situated on land acquired or appropriated by a special road authority, and for the time being used, for the provision of facilities to be used in connection with the use of a special road provided for the use of traffic of class I (with or without other classes); or

(b) premises used primarily as a garage or which form part of premises which are primarily so used.

(3) [not relevant]

(4) For the purposes of this section—

(a) “special road” and “special road authority” have the same meaning as in the Highways Act 1980 (c. 66), except that “special road” includes a trunk road to which (by virtue of paragraph 3 of Schedule 23 to that Act) the provisions of that Act apply as if the road were a special road,

(b) “class I” means class I in Schedule 4 to the Highways Act 1980 as varied from time to time by an order under section 17 of that Act, but if that Schedule is amended by such an order so as to add to it a further class of traffic, the order may adapt the reference in subsection (2)(a) to traffic of class I so as to take account of the additional class

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- 3.10 In submitting its application for the sale of alcohol at the premises, for consideration under the Licensing Act 2003, the applicant has indicated that it considers that the premises are not “excluded premises” for the purposes of the Act.
- 3.11 The BDC representation is that as the site comprises an “excluded premises”, it would be inappropriate for the Sub-Committee to licence them for the sale of alcohol.
- 3.12 Whether the application site comprises “excluded premises” for the purposes of the Act is part of the determination to be made by the Sub-Committee and whether to consider granting a licence for the sale of alcohol under the Licensing Act 2003, and if so on what terms.
- 3.13 Prior to 1992, the Department of Transport had responsibility for developing MSAs: acquiring land, funding construction and leasing the completed sites to operating companies. This is the status of the Frankley Motorway Services Areas. The site was sold to Granada in 1995 and to the applicant in 1999.
- 3.14 Since 1992, government policy has been that the private sector should acquire MSA sites and seek planning consent from local planning authorities to develop and operate them.
- 3.15 The BDC objection is based on the fact that s176 excludes premises from being able to sell alcohol if they were originally acquired by a special road authority regardless of whether they have entered the private sector since then, as in the case of the Frankley MSA
- 3.16 The applicant takes the view that since the sites are now in their private ownership, they qualify for consideration by the local licensing authority to be licensed under the Licensing Act 2003, even if not wholly acquired and developed by a private owner since 1992.
- 3.17 In 2012 the Home Office carried out consultation on reviewing the prohibition on the sale of alcohol from MSAs but no proposals have as yet been forthcoming.

Service/Operational Implications

- 3.18 The Licensing Authority is required to comply with the statutory timescales for arranging hearings under the Licensing Act 2003.

Customer / Equalities and Diversity Implications

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- 3.19 The Licensing Sub-Committee will ensure it has regard to the desirability of exercising its functions with regard to the need to eliminate discrimination and to increase equality of opportunity. Applications received will be treated in accordance with BDC's Equal Opportunities policy.

4. RISK MANAGEMENT

- 4.1 None

5. APPENDICES

Appendix 1 Application Form

Appendix 2 Objection letter from Local Licensing Authority

6. BACKGROUND PAPERS

Licensing Act 2003

Guidance under S182 of the Licensing Act 2003

BDC Statement of Licensing Policy

AUTHOR OF REPORT

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