

**Name of meeting:** Licensing Panel

**Date:** Wednesday 4<sup>th</sup> September 2019, at 11:30am – Meeting Room 1, Huddersfield Town Hall, Ramsden Street, Huddersfield

**Title of report:** Licensing Act 2003 – Application to vary a Premises Licence to specify an individual as designated premises supervisor under section 37 of Licensing Act 2003 at Beechley Filling Station, Flush Garage, Wakefield Road, Liversedge, WF15 6AU

**Purpose of report:** To determine the application

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports?)</u>	Not applicable
The Decision - Is it eligible for call in by Scrutiny?	Not applicable
Date signed off by <u>Strategic Director</u> & name	Russell Williams as agreed by Karl Battersby
Is it also signed off by the Service Director (Finance)?	Not applicable
Is it also signed off by the Service Director for Legal Governance and Commissioning?	Not applicable
Cabinet member <u>portfolio</u>	Cllr Rob Walker

**Electoral wards affected:** Heckmondwike

**Ward councillors consulted:** Cllr Aafaq Butt  
 Cllr Stave Hall  
 Cllr Viv Kendrick

**Public or private:** Public

**GDPR Implications:**

GDPR has been considered and appropriate sections of the report have been amended

## 1 Summary

The purpose of this report is to inform Members of an application to vary a premises licence; which as a result of representations received, has been referred to this Panel for determination.

## 2 Information required to take a decision

### 2.1 Application

2.1.1 On 29<sup>th</sup> July 2019 the Licensing department received an application to vary a Premises Licence to specify an individual as designated premises supervisor. This application was made by [REDACTED]. A copy of this application may be seen at **Appendix A**.

2.1.2 A Representation has been received relating to this application from West Yorkshire Police. West Yorkshire Police consider that the following licensing objectives would not be achieved, should this licence be granted:

- Prevention of Crime and Disorder
- Protection of Children from Harm
- Public Safety

A copy of this representation may be seen at **Appendix B**.

2.1.3 The premise licence in place at Beechley Filling Station has been in place for a number of years. However, the licence was revoked by members at a Licensing Panel hearing on 16<sup>th</sup> April 2019, after a review of the licence was submitted by West Yorkshire Police. The revocation of the licence has been appealed to Kirklees Magistrates court. As a result of the hearing at Kirklees Magistrates court on 31<sup>st</sup> July 2019, the court has directed that the appeal is to be referred back to the licensing panel for determination of the application.

2.1.4 At the appeal hearing, a request was made by the premises licence holders representative that the application be referred back to the licensing panel. This was because the premises licence holder was unable to attend the appeal hearing due to ill health. The magistrates agreed with this request.

### 2.2 Licensing Policy

Members considering the application should take note of the Authority's Statement of Licensing Policy, which provides the following guidance on how Members should approach the application and representation:

#### 1.0 – Executive Summary

1.2 In exercising its duties and responsibilities under the terms of the Licensing Act 2003, the Council will operate within the statements and procedures mentioned in this policy statement. Notwithstanding this statement, all applications will be treated on their merits and judged accordingly. The council

will have regard to any relevant guidance issued by the Secretary of State in exercising its powers under the Act.

## **2.0 – Purpose and Scope of the Licensing Policy**

2.7 The Licensing Authority recognises that each licence application must be considered on its own individual merits in the context of the four licensing objectives, and that unless relevant representations are received from responsible authority's or interested parties, there is no provision for a Licensing Authority to impose conditions on a licence other than those proposed within an application. Only conditions which have been volunteered by the applicant or which have been determined at a Licensing Panel hearing can be attached to a licence or certificate. If no relevant representations are made in respect of an application, the Licensing Authority is obliged to issue the licence on the terms sought.

### **Licensing Objectives.**

1. Public Safety
2. Prevention of crime & disorder
3. Prevention of public nuisance
4. Protection of children from harm

### **2.3 Secretary of State Guidance**

Members also need to consider statutory guidance issued, by the Secretary of State, under Section 182 of the Licensing Act 2003. As the representations relate to all four licensing objectives, Members attention is drawn to Section 2 of this Guidance, the relevant parts of which may be found at **Appendix C**.

## **3 Implications for the Council**

### **3.1 Working with People**

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Residents of Kirklees need to be confident that under the Licensing Act 2003 licence holders under the Licensing Act 2003 are in a position to uphold the four licensing objectives. The committee is required to take appropriate and necessary action against licence holders where they fall short of their duties under the Licensing Act 2003. This will support both the licensing objectives and support the corporate outcomes of citizens in Kirklees living in cohesive communities, feeling safe and protected from harm.

### **3.2 Working with Partners**

The Council's licensing team work closely with partnering agencies, named 'Responsible Authorities' under the Licensing Act 2003. Responsible authorities include Planning, West Yorkshire Police, Trading Standards, Environmental Health, Fire Service, and Safe Guarding Children team.

### **3.3 Place Based Working**

Working closely with Responsible Authorities the Licensing Authority can address issues within the districts that make up Kirklees.

### **3.4 Improving outcomes for children**

A key objective of the Licensing Act is the protection of children from harm, and any decision made by the Council, in its capacity as Licensing Authority, will have to have regard to this objective.

### **3.5 Other (e.g. Legal/Financial or Human Resources)**

In determining the application Members should have regard to the Authority's licensing policy statement and the Secretary of State's Guidance. The applicant or any other person who made relevant representations in relation to the application have a right of appeal to the Magistrates' court.

## **4 Consultees and their opinions**

Consultation has taken place in accordance with the Act. West Yorkshire Police have made a representation.

## **5 Next steps and timelines**

5.1 When determining the application Members, having had regard to the representation, may take such steps as they consider appropriate for the promotion of the licensing objectives. The steps are

- grant the application,
- grant the application with the appropriate conditions,
- exclude from the scope of the licence any of the licensable activities which relate to this application, or
- reject the application

5.2 Findings on any issues of fact should be on the balance of probability.

5.3 In arriving at a decision Members must have regard to the relevant provisions of statutory guidance and the licensing policy statement and reasons must be given for any departure.

5.4 The decision should be based on the individual merits of the application.

## **6 Officer recommendations and reasons**

6.1 Members of the Panel are requested to determine the application

## **7 Cabinet portfolio holder's recommendations**

Not applicable

## **8 Contact officer**

Mike Skelton, Licensing Officer, Licensing Service  
Tel: 01484 221000 ext. 70540  
Email: [mike.skelton@kirklees.gov.uk](mailto:mike.skelton@kirklees.gov.uk)

## **9 Background Papers and History of Decisions**

- 9.1 Appendix A – Application to vary a premises licence to specify an individual as designated premises supervisor under Licensing Act 2003 by [REDACTED]
- 9.2 Appendix B – Representation from West Yorkshire Police
- 9.3 Appendix C – Relevant sections of Secretary of State Guidance – Section 182 of Licensing Act 2003

## **10 Strategic Director responsible**

Karl Battersby – Strategic Director, Economy and Infrastructure  
Tel: 01484 221000  
Email: [karl.battersby@kirklees.gov.uk](mailto:karl.battersby@kirklees.gov.uk)

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**Application to vary a premises licence to specify an individual as designated premises supervisor under the Licensing Act 2003**

Before completing this form please read the guidance notes at the end of the form.

If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I / we



*(full name(s) of premises licence holder)*

Being the premises licence holder, apply to vary a premises licence to specify the individual named in this application as the premises supervisor under section 37 of the Licensing Act 2003

Premises licence number

BRA 0287

## Part 1 - Premises details

Postal address of premises or, if none, Ordnance Survey map reference or description BEECHER GILNE STATION FLUKE ENTRANCE, WATFORD ROAD	
Posttown WATFORD	Post code (if known) WF15 6AU
Telephone number (if any)	

Description of premises (please read guidance note 1) GILNE STATION WITH <del>CONDUITANCE POINT AND</del> OFF-LICENCE
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**Part 2- Proposed supervisor details**

Full name of proposed designated premises supervisor

[REDACTED]

Nationality

[REDACTED]

Place of birth

[REDACTED]

Date of birth

[REDACTED]

[REDACTED]

Personal licence number of proposed designated premises supervisor and issuing authority of that licence (if any)

[REDACTED]

BAMBERS COUNCIL

Full name of existing designated premises supervisor (if any)

[REDACTED]



Please tick yes

I would like this application to have immediate effect under

section 38 of the Licensing Act 2003 (please read guidance note 2)

I have enclosed the premises licence or relevant part of it

(If you have not enclosed the premises licence, or relevant part of it, please give reasons why not)

Reasons why I have failed to enclose the premises licence or relevant part of it

Please tick yes

I have made or enclosed payment of the fee

I will give a copy of this application to the chief officer of police (please read guidance note 3)

I have enclosed the consent form completed by the proposed premises supervisor

I have enclosed the premises licence, or relevant part of it or explanation

I will notify the existing premises supervisor (if any) of this application (please read guidance note 4)

I understand that if I do not comply with the above requirements my application will be rejected

It is an offence, under Section 158 of the Licensing Act 2003, to knowingly or recklessly make a false statement in or in connection with this application. Those who make a false statement may be liable on summary conviction to a fine of any amount.

It is an offence under section 24B of the Immigration Act 1971 for a person to work when they know, or have reasonable cause to believe, that they are disqualified from doing so by reason of their immigration status.

Those who employ an adult without a valid leave to enter or remain in the UK or an adult who is subject to conditions which would prevent that person from taking up employment will be liable to a civil penalty under Section 15 of the Immigration, Asylum and Nationality Act 2006 and, pursuant to section 21 of the same act, will be committing an offence where they do so in the knowledge, or with reasonable cause to believe, that the employee is disqualified by virtue of their immigration status.

**Part 3 – Signatures** (please read guidance note 5)

Signature of applicant or applicant's solicitor or other duly authorised agent (See guidance note 6). If signing on behalf of the applicant please state in what capacity.

Signature

[Redacted Signature]

Date

26-7-19

Capacity

AGENT FOR THE APPLICANT

For joint applicants signature of 2<sup>nd</sup> applicant, 2<sup>nd</sup> applicant's solicitor or other authorised agent (please read guidance note 7). If signing on behalf of the applicant please state in what capacity.

Signature

Date

Capacity

**Stephanie Mashiter**

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**From:** Woodhead, Richard <[REDACTED]>  
**Sent:** 29 July 2019 14:17  
**To:** June Sparkes  
**Cc:** Licensing; Russell Williams; Stephanie Mashiter; Jagger, Kathryn  
**Subject:** RE: Vary DPS Beechley Filling Station

Dear June and All,

West Yorkshire police wish to object to the transfer of the DPS for Beechley service station. The gentleman who wishes to become DPS, is [REDACTED] himself, he has been premises licence holder, and was present when we found the non-duty paid cigarettes, he was in charge when the shop failed the test purchase, and has been acting as general manager of the site since he transferred the premises licence. Therefore we feel he is not suitable to take on responsibility of being a DPS, as his track record proves he is unsuitable, and so we object to this transfer.  
Many thanks  
R. Woodhead.

-----Original Message-----

**From:** June Sparkes [mailto:[REDACTED]]  
**Sent:** 29 July 2019 14:10  
**To:** Woodhead, Richard <[REDACTED]>; Jagger, Kathryn <[REDACTED]>  
**Subject:** Vary DPS Beechley Filling Station

Hello  
Please see attached application to Vary the DPS at Beechley Filling Station.  
Thank you  
June

June Sparkes | Business Support | Licensing | Place – Investment & Regeneration | Kirklees Council | Flint Street, Fartown, Huddersfield, HD1 6LG | ☎ 01484 456868 ✉ june.sparkes@kirklees.gov.uk

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**Relevant Sections of Secretary of State Guidance – Under Section 182 of  
Licensing Act 2003**

**Crime and disorder**

2.1 Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP).

2.2 In the exercise of their functions, licensing authorities should seek to co-operate with the Security Industry Authority (“SIA”) as far as possible and consider adding relevant conditions to licences where appropriate. The SIA also plays an important role in preventing crime and disorder by ensuring that door supervisors are properly licensed and, in partnership with police and other agencies, that security companies are not being used as fronts for serious and organised criminal activity. This may include making specific enquiries or visiting premises through intelligence led operations in conjunction with the police, local authorities and other partner agencies. Similarly, the provision of requirements for door supervision may be appropriate to ensure that people who are drunk, drug dealers or people carrying firearms do not enter the premises and ensuring that the police are kept informed.

2.3 Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises (see paragraph 10.10). For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.

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2.4 The inclusion of radio links and ring-round phone systems should be considered an appropriate condition for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises. These systems allow managers of licensed premises to communicate instantly with the police and facilitate a rapid response to any disorder which may be endangering the customers and staff on the premises.

2.5 Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances

where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.

2.6 The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters. Licence conditions that are considered appropriate for the prevention of illegal working in licensed premises might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check are retained at the licensed premises.

### **Public safety**

2.7 Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.

2.8 A number of matters should be considered in relation to public safety. These may include:

- Fire safety;
- Ensuring appropriate access for emergency services such as ambulances;
- Good communication with local authorities and emergency services, for example communications networks with the police and signing up for local incident alerts (see paragraph 2.4 above);
- Ensuring the presence of trained first aiders on the premises and appropriate first aid kits;
- Ensuring the safety of people when leaving the premises (for example, through the provision of information on late-night transportation);
- Ensuring appropriate and frequent waste disposal, particularly of glass bottles;
- Ensuring appropriate limits on the maximum capacity of the premises (see paragraphs 2.12-2.13, and Chapter 10; and

- Considering the use of CCTV in and around the premises (as noted in paragraph 2.3 above, this may also assist with promoting the crime and disorder objective).

2.9 The measures that are appropriate to promote public safety will vary between premises and the matters listed above may not apply in all cases. As set out in Chapter 8 (8.38-8.46), applicants should consider when making their application which steps it is appropriate to take to promote the public safety objective and demonstrate how they achieve that.

2.10 Licence holders should make provision to ensure that premises users safely leave their premises. Measures that may assist include:

- Providing information on the premises of local taxi companies who can provide safe transportation home; and
- Ensuring adequate lighting outside the premises, particularly on paths leading to and from the premises and in car parks.

2.11 Where there is a requirement in other legislation for premises open to the public or for employers to possess certificates attesting to the safety or satisfactory nature of certain equipment or fixtures on the premises, it would be inappropriate for a licensing condition to require possession of such a certificate. However, it would be permissible to require as a condition of a licence or certificate, if appropriate, checks on this equipment to be conducted at specified intervals and for evidence of these checks to be retained by the premises licence holder or club provided this does not duplicate or gold-plate a requirement in other legislation. Similarly, it would be permissible for licensing authorities, if they receive relevant representations from responsible authorities or any other persons, to attach conditions which require equipment of particular standards to be maintained on the premises. Responsible authorities – such as health and safety authorities – should therefore make their expectations clear in this respect to enable prospective licence holders or clubs to prepare effective operating schedules and club operating schedules.

2.12 “Safe capacities” should only be imposed where appropriate for the promotion of public safety or the prevention of disorder on the relevant premises. For example, if a capacity has been imposed through other legislation, it would be inappropriate to reproduce it in a premises licence. Indeed, it would also be wrong to lay down conditions which conflict with other legal requirements. However, if no safe capacity has been imposed through other legislation, a responsible authority may consider it appropriate for a new capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that effect. For example, in certain circumstances, capacity limits may be appropriate in preventing disorder, as overcrowded venues can increase the risks of crowds becoming frustrated and hostile.

2.13 The permitted capacity is a limit on the number of persons who may be on the premises at any time, following a recommendation by the relevant fire and rescue authority under the Regulatory Reform (Fire Safety) Order 2005. For any application for a premises licence or club premises certificate for premises without an existing permitted capacity where the applicant wishes to take advantage of the special provisions set out in section 177 of the 2003 Act<sup>1</sup>, the applicant should conduct their own risk assessment as to the appropriate capacity of the premises. They should send their recommendation to the fire and rescue authority which will consider it and decide what the “permitted capacity” of those premises should be.

2.14 Public safety may include the safety of performers appearing at any premises, but does not extend to the prevention of injury from participation in a boxing or wrestling entertainment.

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