



ST HELENS
BOROUGH COUNCIL

Town Hall, St. Helens, Merseyside, WA10 1HP

Telephone: 01744 673289 (Mrs S Frayne)

Agenda

LICENSING SUB-COMMITTEE

PUBLIC MEETINGS ARE WEBCAST (LIVE STREAMED)

Date: Friday, 12 April 2024

Time: 9.30 am

Venue: Room 10

Membership

Lab 3 Councillors C D Banks, J Banks and Laird

<u>Item</u>	<u>Title</u>	<u>Page</u>
4.	<u>Determination of 2 x Premises Licence Applications for Asda Express – Additional Information</u>	3

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Asda Express

102 St Helens Linkway, St Helens, WA9 5DT

And

Warrington Road, Rainhill, St Helens, L35 9JB

Applicant Supporting Evidence

Asda Express Warrington Rd, Rainhill and Asda Express 102 St Helens Linkway

Home Office Guidance issued under s182 Licensing Act 2003 December 2023

10.15 Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

9.43 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

9.12 Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area . The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing

2.1 Licensing authorities should look to the police as the main source of advice on crime and disorder

St Helens Licensing Policy

4.4 Taking into account the problems of crime, disorder, nuisance and anti-social behaviour into the early hours of the morning, we have introduced a framework of opening and closing times for premises.

4.5 This framework applies to applications for new premises licences / club premises certificates and to applications for variations to extend the hours for licensable activities (earlier and later in the case of the sale of alcohol).

☒ Off Licensed Premises 8:00 am to 11:00 pm Sunday to Saturday

☒ On licensed Premises 1:00 am Sunday to Thursday

3:00 am Friday and Saturday (& Bank Holidays)

☒ Late Night Refreshment 1:30 am Sunday to Thursday

Premises 3:30 am Friday and Saturday (& Bank Holidays)

4.6 Existing premises will not be affected by this framework unless there are good reasons for imposing restrictions following a review of a premises licence or club premises certificate

4.7 Applicants should note that there is no guarantee that an application will be granted if the hours of trading fall within this framework. In similar terms, an application will not automatically be rejected because the proposed hours of trading fall outside of the framework. All applications will be considered on their individual merits.

From: Richard Taylor
Sent: 29 February 2024 16:11
To: Janet Braithwaite; ChrisKenny@sthelens.gov.uk
Cc: generallicensing@sthelens.gov.uk; Ireland Nicola Ann
Subject: RE: RE: Premises licence applications - Asda Express - Warrington Road & Sherdley Road - St Helens GTE:00122000027446
Attachments: Suggested conditions ASDA Express PFS Rainhill & Sherdley Park.docx

Dear Chris

I hope this email finds you well?

I am responsible for all Asda applications and have been discussing these two premises with Nicola Ireland from Merseyside Police (copied in.)

I am pleased to confirm that we have agreed a reduction in hours for alcohol sales and a list of agreed conditions to replace those which accompanied the original application.

Please accept this email as a formal amendment to the application such that the attached conditions are offered and the hours for alcohol sales are reduced to 0600 to midnight.

Nicky is copied in so that she can confirm that subject to these amendments, the police have no objections/representations.

For your information, I can also confirm that the request for late night refreshment is to cover the sale of hot drinks only – there is a coffee machine within the premises.

I will come back to you with regard to the outstanding issues questions raised in the email below.

In the meantime, please let me know if you require anything further from me.

Kind regards

Richard Taylor | Partner | Head of Licensing Department

for and on behalf of Gosschalks LLP

Queens Gardens, Kingston Upon Hull, HU1 3DZ

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From: janet_braithwaite@gosschalks.co.uk <janet_braithwaite@gosschalks.co.uk>
Sent: Tuesday, February 27, 2024 4:49 PM
To: ChrisKenny@sthelens.gov.uk
Cc: generallicensing@sthelens.gov.uk
Subject: RE: Premises licence applications - Asda Express - Warrington Road & Sherdley Road - St Helens GTE:00122000027446

Hi Chris

Many thanks for your email upon which we will take instructions and revert in due course

Kind regards
Janet

Janet Braithwaite | Administrator | Licensing

for and on behalf of Gosschalks LLP

Queens Gardens, Kingston Upon Hull, HU1 3DZ

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From: Christopher Kenny <ChrisKenny@sthelens.gov.uk>
Sent: Tuesday, February 27, 2024 4:46 PM
To: Janet Braithwaite <janet_braithwaite@gosschalks.co.uk>
Cc: General Licensing <generallicensing@sthelens.gov.uk>
Subject: Premises licence applications - Asda Express - Warrington Road & Sherdley Road - St Helens

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Janet

I am contacting you on behalf of St Helens Council as Licensing Authority, in relation to the new premises licence applications applied for in respect of Asda Express, Warrington Road, Rainhill and Asda Express, 102 St Helens, Linkway.

The licence applications propose:

Late Night Refreshment: Monday to Sunday 23:00 to 05:00.
 Retail sale of alcohol (consumption off the premises): Monday to Sunday 00:00 to 00:00.
 Premises open to the public: Monday to Sunday 00:00 to 00:00.

Whilst considering this application on its merits I would wish to make the following initial comments.

I am mindful of the St Helens Statement of Licensing Policy (2023-2028) a copy of which can be accessed through the below link.

[Draft Statement of Licensing Policy \(sthelens.gov.uk\)](#)

Section 4.4 provides for a framework of hours that for off licensed premises is:

Off Licensed Premises 8:00 am to 11:00 pm Sunday to Saturday

Late Night Refreshment 1:30 am Sunday to Thursday Premises 3:30 am Friday and Saturday (& Bank Holidays)

Whilst all applications are considered on their individual merits our policy does state in section 1.12:

This Licensing Policy sets out the vision the Council has for the regulation of licensed premises throughout St Helens and outlines the standards expected in order to ensure the promotion of the licensing objectives in the Borough. The Council may depart from the policy should it consider

4

doing so would benefit the promotion of the licensing objectives. Reasons will be given for any such departure from the general policy in this statement. However, it is expected that any such departure would likely only be in exceptional circumstances.

I would invite your comments as why you as the applicant for this premises licence considers a departure for our Licensing Policy would benefit the promotion of the licensing objectives in respect of the proposed licensed hours.

Looking at the contents of the proposed operating schedules and giving reference to section 6.23 of our Licensing Policy which I have detailed below:

Details of any training for staff, including the frequency of refresher training on how to prevent underage sales and any other relevant matters, and how this will be recorded; - hoe often will staff receive training?

The percentage of the premises to be used for the sale of alcohol, including details of other items to be sold; - the application makes no reference to this - can this be provided.

Details of the sale of low value / high alcohol products and any discounts or promotions that may be adopted. - the application makes no reference to this - can this be provided.

The operating schedule as provided with the application includes:

'The company has devised policies, procedures, systems and training to ensure they sell alcohol in a responsible manner'. No details of any of this has been included. Can this be provided?

Note that on our website applicants are advised:

Pre-consultation is strongly advised with all responsible authorities, prior to submission of an application.

I note that prior to these applications being submitted the Licensing Authority were not pre-consulted.

Can I reiterate that on behalf of the Licensing Authority I am considering this application on its individual merits (as per section 14.10 of the revised guidance issued under section 182 of the Licensing Act 2003 - December 2023).

I would ask for your consideration of reducing the proposed hours for the sale of alcohol from these premises to be within the framework of hours as stated above and to provide for condition that would seek to promote the licensing objectives as per the contents of Chapter 6 of our Statement of Licensing Policy.

Thank you and I look forward to hearing back from you.

Regards

Chris Kenny

Principal Operations Officer

Licensing & Land Charges Section

Place Services

3rd Floor Wesley House

Corporation Street

St Helens

WA10 1HF

M - 07801 405531

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Suggested conditions**ASDA EXPRESS PFS Sherdley Park & ASDA EXPRESS PFS Rainhill**

1. CCTV must be installed at the premises in the form of a recordable system, capable of providing pictures of EVIDENTIAL QUALITY in all lighting conditions particularly facial recognition.
2. Cameras must encompass all entrances and exits to the premises and all areas where the sale/ supply of alcohol occurs. Equipment must be maintained in good working order and checked every 12 months. The system shall record in real time and operate whilst the premises are open for licensable activities.
3. CCTV recordings must be kept available for a period of 31 days and handed to Police or Local Authority approved Officer on receipt of a valid Data Protection Act (DPA) request. The Recording equipment shall be kept in a secure environment under the control of the Premises Licence Holder or other responsible named individual.
4. The Retailer or Site Manager will be trained to be able to download evidence with the minimum of delay at the request of the Police or Local Authority approved officer on receipt of a valid Data Protection Act (DPA) request.
5. Staff will be trained regarding the premises licence and their responsibilities in the retail sale of alcohol and regular refresher training will also be undertaken. Training records can be made available for inspection upon reasonable request by the police or other relevant officers of a responsible authority.
6. A challenge 25 policy will be operated at the premises with a till prompt system for alcohol products, acceptable forms of identification are a passport, photo card driving licence, military ID, PASS accredited identification card or any other ID approved for use by the Home Office. Notices in relation to this will be displayed prominently at the premises.
7. An incident log will be operated and maintained and will be produced to a relevant officer of the police or other relevant officers of a responsible authority upon request.
8. A refusals log will be operated and maintained and will be produced to a relevant officer of the police or other relevant officers of a responsible authority upon request.

9. Spirits will be located behind the counter.

10. There will be no sale of beer, lager or cider in single cans (i.e. split multipacks.) For the avoidance of doubt, this does not apply to the sale of artisan/craft beer, lager or cider sold in single units.

11. No sale of cans of lager/cider/beer above 6.5% ABV (except for Artisan products).

12. The premises shall operate an alcohol refusals policy - alcohol will not be sold to;
 - i. Any person recognised or identified as a street drinker (regardless of their level of inebriation at the time);
 - ii. Any person who is drunk or appears to be drunk;
 - iii. Any person suspected of trying to buy alcohol for another person who is drunk or appears to be drunk;
 - iv. Any person unable to provide valid ID when requested by staff;
 - v. Any person who is verbally or physically abusive towards staff or customers.
 - vi. To any person suspected of trying to buy alcohol for another person(s) who may be under age.

From: Ireland Nicola Ann <Nicola.Ireland@merseyside.police.uk>
Sent: 04 March 2024 09:42
To: Richard Taylor; General Licensing
Subject: RE: RE: Premises licence applications - Asda Express - Warrington Road & Sherdley Road - St Helens GTE:00122000027446

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To Whom it may Concern,

I can confirm that I have liaised with Mr Taylor in relation to these applications and we have agreed that the police will not object to the significantly reduced hours and agreed conditions.

Regards

Nicky Ireland

Nicola Ireland
Con Licensing
PREV Licensing Proactive | Team 3



For more information about the use and disclosure of personal data, see our [privacy notice](#)

From: Richard Taylor <RJT@gosschalks.co.uk>
Sent: Thursday, February 29, 2024 4:11 PM
To: Janet Braithwaite <janet_braithwaite@gosschalks.co.uk>; ChrisKenny@sthelens.gov.uk
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Principal Operations Officer

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**Daniel Thwaites Plc v Wirral Borough Magistrates' Court v The Saughall Massie Conservation Society,
Wirral Metropolitan Borough Council**

My overall conclusions

63. It would be wrong, in my judgment, to say that the magistrates failed to take account of the licensing objectives. At the outset of their Reasons, they correctly identify those which are relevant. Similarly, as the First Interested Party submits, whilst they did not *articulate* that the curtailment of the hours sought was “necessary” to promote those objectives, it is implied in their decision that they did take this view and it can also be inferred from their comment that because of the concept of migration, public nuisance and crime and disorder would be “an inevitable consequence” of leaving the hours as granted by the Local Authority. However, in my view their approach to what was “necessary” was coloured by a failure to take proper account of the changed approach to licensing introduced by the Act. Had they had proper regard to the Act and the Guidance, they would have approached the matter with a greater reluctance to impose regulation and would have looked for real evidence that it was required in the circumstances of the case. Their conclusion that it was so required on the basis of a risk of migration from other premises in the vicinity was not one to which a properly directed bench could have come. The fact that the police did not oppose the hours sought on this basis should have weighed very heavily with them whereas, in fact, they appear to have dismissed the police view because it did not agree with their own. They should also have considered specifically the question of precisely how frequently the premises would be likely to be open late and made findings about it. They would then have been able to compare this to the winter opening pattern in relation to which they accepted there had been no complaints and draw proper conclusions as to the extent to which the summer months would be likely to differ from the winter picture. Having formed a clear view of how frequently late opening could be anticipated, they would also have been able to draw more reliable conclusions about the willingness of customers from further afield to migrate to Saughall Massie. They proceeded without proper evidence and gave their own views excessive weight and their resulting decision limited the hours of operation of the premises without it having been established that it was necessary to do so to promote the licensing objectives. In all the circumstances, their decision was unlawful and it must be quashed.

Case No: CO/5533/2006

High Court of Justice Queen's Bench Division Administrative Court

6 May 2008

[2008] EWHC 838 (Admin)

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