RMI

6 May 2016

Dear Sirs

Licensing Act 2003 Review of Licensing Policy

The Petrol Retailers Association ("the PRA") represents independent fuel retailers providing evaluation and advice on a range of issues that impact on the fuel retailing industry.

The draft revised licensing policy for East Hertfordshire District Council (the "SLP") has been brought to our attention..

We wish to comment on the following paragraphs:

Paragraphs 5.1 to 5.7

5.1 Section 176 of the 2003 Act prohibits the sale or supply of alcohol from premises which are used primarily as a garage, or are part of premises used primarily as a garage. Premises are used primarily as a garage if they are used for one or more of the following:
- *the retailing of petrol;*
- *the retailing of derv;*
- *the sale of motor vehicles; and*
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5.2 If premises that are primarily used as a garage are granted a licence, that licence is "of no effect" and alcohol may not be lawfully sold.

5.3 It follows that we must be satisfied whether or not any premises are used primarily as a garage before we grant a licence for it. This is not to restrict the granting of a licence in such cases but for all parties to be clear as to whether the licence is an effective one or not.

5.4 Where there is a question around the primary use of premises, we may request that an applicant or licence holder demonstrate that their premises are not primarily used as a garage based on intensity of use. Such evidence must be based on income (from retailing petrol and derv and vehicles sales/maintenance versus other items) and the numbers of individual sales (of petrol, derv and vehicles sales/maintenance versus other items) over the previous two years to show that petrol and derv sales, and vehicle maintenance and sales, are not the premises main feature. Where such information is not available (because for example the premises have only just started trading), we will consider imposing a condition requiring this information to be provided to the Licensing Authority on a regular basis for the following two years to ensure the premises are not primarily a garage.

5.5 Where insufficient evidence exists to establish primary use, we will decide whether or not to grant a licence or allow premises to continue selling alcohol and deal with any subsequent issues using our enforcement powers in conjunction with other responsible authorities.

5.6 Where relevant representations have been made and a premises licence is granted in these circumstances, we shall treat it as an off-licence, as defined in this policy, and grant hours accordingly.

5.7 Paragraph 5.21 of the statutory guidance issued under the Act makes it clear that we must decide whether or not any premises is used primarily as a garage. We are aware that different licensing authorities take a number of different approaches to this question. Where appropriate, this approach will allow us to obtain the necessary information for us to reach that decision.

We are advised by our solicitors, Winckworth Sherwood that this part of the SLP is misleading and at least in part, altogether wrong.

The Licensing Act 1964 disqualified a person from receiving a licence if the premises were primarily used as a garage.

The Licensing Act 2003 ("the 2003 Act") provides that no premises licence "has effect" to authorise the sale or supply of alcohol from excluded premises. Premises primarily used as a garage are included in the definition of "excluded premises".

You may be aware that the Home Office published revised guidance ("the Guidance") under section 182 of the 2003 Act in March 2015 and in paragraphs 5.21 to 5.23 it amended previous guidance to clarify the position regarding applications for garages and motorway service areas. This followed meetings and discussions between Winckworth Sherwood and the Home Office.

Paragraph 5.22 of the Guidance provides that the Licensing Authority must determine the application based on the documents and information required to be submitted by an applicant under sections 17(3) and (4) of the 2003 Act. This must be correct and, of course, there is no requirement in section 17 for an applicant to demonstrate that the main activity of the premises is not that of a garage.

Paragraph 5.23 of the Guidance goes on to say that "if a licence is granted... " and the primary use subsequently becomes that of a garage it would no longer be legal to sell alcohol at the premises. Again this is correct. Section176 of the 2003 Act provides that a licence (this assumes that there is a licence in existence) has no effect if the primary use is that of a garage.

It is therefore contrary to both the 2003 Act and the Guidance to state that "*It follows that we must be satisfied whether or not any premises are used primarily as a garage before we grant a licence for it." (SLP paragraph 5.3).*

The remainder of SLP paragraph 5.3: *This is not to restrict the granting of a licence in such cases but for all parties to be clear as to whether the licence is an effective one or not.* is inconsistent with SLP paragraphs 5.4 and 5.5.

SLP paragraph 5.4 seems to supersede the statute by setting out a test to establish primary use both as to the type of data and over what period of time. This test is not support by the 2003 Act, the Guidance or indeed case law. There is no requirement in law for an applicant or an existing licence holder to demonstrate primary use over a two year period.

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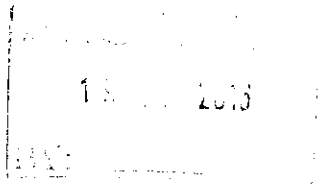
Yours faithfully

CB Madderson
Chairman – Petrol Retailers Association

MRH Retail

MRH, Vincent House, 4 Grove Lane, Epping, Essex, CM16 4LH,



16.05.16

Licensing
East Herts Council
Wallfields
Pegs Lane
Hertford
Hertfordshire
SG13 8EQ

Dear Sirs

Licensing Act 2003 Review of Licensing Policy

MRH (GB) Limited is the UK's largest independent petrol station owner with over 450 company owned sites most of which are branded Esso, BP and Torq. Most of these sites are licensed to sell alcohol, including the following sites in the East Herfordshire area:

MRH Buntingford, A10 London Road, Buntingford, SG9 9JY
MRH Howe Green, Baldock Road, Buntingford, SG9 9EG
MRH Hertford, 133 Hertingfordbury Road, Hertford, Herts, SG14 1NL

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5.6 Where relevant representations have been made and a premises licence is granted in these circumstances, we shall treat it as an off-licence, as defined in this policy, and grant hours accordingly.

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The Licensing Act 1964 disqualified a person from receiving a licence if the premises were primarily used as a garage.

The Licensing Act 2003 ("the 2003 Act") provides that no premises licence "has effect" to authorise the sale or supply of alcohol from excluded premises. Premises primarily used as a garage are included in the definition of "excluded premises".

You may be aware that the Home Office published revised guidance ("the Guidance") under section 182 of the 2003 Act in March 2015 and in paragraphs 5.21 to 5.23 it amended previous guidance to clarify the position regarding applications for garages and motorway service areas. This followed meetings and discussions between Winckworth Sherwood and the Home Office.

Paragraph 5.22 of the Guidance provides that the Licensing Authority must determine the application based on the documents and information required to be submitted by an applicant under sections 17(3) and (4) of the 2003 Act. This must be correct and, of course, there is no requirement in section 17 for an applicant to demonstrate that the main activity of the premises is not that of a garage.

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Yours faithfully

Debbie Walters
Manager, Merchandising & Shops
M 07769 671795
E debbie.walters@mrhretail.co.uk

RONTEC
ROADSIDE RETAIL

Rontec Watford Limited
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69–71 Clarendon Road
Watford
Hertfordshire WD17 1DS
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Fax: 01923 694 400
www.rontec.com

Licensing
East Herts Council
Wallfields
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SG13 8EQ

13.05.16

Dear Sirs

Licensing Act 2003 Review of Licensing Policy

Rontec Watford Limited is one of the leading players in the petrol forecourt industry. We own 211 petrol stations in England and Wales of which 209 are licensed to sell alcohol.

One of our sites is the Widbury Hill Service Station, Widbury Hill Ware, SG12 7AS which has a premises licence.

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Rupert Ainsworth
Property Projects Manager

BP Oil UK Limited
Witan Gate House
500-600 Witan Gate
Milton Keynes
Buckinghamshire
MK9 1ES
UK

Direct Line: 020 3683 9969
Direct Fax: (01908) 853693
Email UKRetailLicencing@bp.com

Your Ref:
Our Ref: NM/DOC

16/05/2016

Licensing
East Herts Council
Wallfields
Pegs Lane
Hertford
Hertfordshire
SG13 8EQ

Dear Sirs

Licensing Act 2003 Review of Licensing Policy

BP Oil UK Limited owns or supplies over 1,200 petrol stations in the UK. The company owns and manages 270 sites including over 220 sites that trade in partnership with Marks & Spencer.

BP owns the following petrol station in the East Herts area:

- Rush Green Service Station Stanstead Rd, Hertford, SG13 7SH

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