

PART A

Report to: Licensing Sub-Committee
Date of meeting: 27 April 2016
Report of: Head of Community and Customer Services
Title: Application for a New Premises Licence
SMAK, 77 Market Street, Watford WD18 0PR
16/00339/LAPRE

1.0 SUMMARY

1.1 An application has been made by Tatjana Jerjomcenko for a new premises licence in respect of SMAK, 77 Market Street, Watford, to allow the sale of alcohol for consumption off the premises. Two representations have been made by Responsible Authorities.

2.0 RECOMMENDATIONS

2.1 That the Licensing Sub-Committee determines whether to grant the application (amended as appropriate for the promotion of the licensing objectives) as set out in the report.

Contact Officer:

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Report approved by: Alan Gough, Head of Community and Customer Services

3.0 APPLICATION

3.1 Type of authorisation applied for
New premises licence.

3.2 Description of premises from application form
SMAK Foods is a small Eastern European convenience store located on Market Street opposite Francis Street.

The premises falls within a sensitive licensing area as detailed in Policy LP4, located within a parade of shops. The premises would be defined as an off-licence within Policy LP1.

3.3 A map of the location of the premises is attached at appendix 1.
A plan of the premises is attached at appendix 2.

3.4 Licensable activities

Licensable activity	Permitted now	Applied for
Plays	N/A	
Films	N/A	
Indoor sports events	N/A	
Boxing or wrestling entertainment	N/A	
Live music	N/A	
Recorded music	N/A	
Performances of dance	N/A	
Anything of a similar description to live or recorded music or dance	N/A	
Provision of facilities for making music	N/A	
Provision of facilities for dancing	N/A	
Provision of facilities of a similar description to making music or dancing	N/A	
Provision of late night refreshment	N/A	
Sale by retail of alcohol for consumption on the premises	N/A	
Sale by retail of alcohol for consumption off the premises	N/A	✓

3.5 Licensable hours

	Proposed opening hours for premises	Proposed hours for sale of alcohol
Monday-Saturday	11:00 – 20:00	11:00 – 20:00
Sunday	11:00 – 18:00	11:00 – 18:00

4.0 **BACKGROUND INFORMATION**

4.1 The following background information is known about these premises:

4.2 Designated premises supervisor

The proposed designated premises supervisor is Tatjana Jerjomcenko.

4.3 Current licences held

None

4.4 Closing date for representations

30 March 2016

4.5 Public notice published in newspaper

11 March 2016

4.6 Visits and Enforcement action

The last routine visit to the premises took place on 28 April 2010 when the Licensing Enforcement Officer recorded that there were no actions required. Further information regarding this matter can be found in paragraph 10.9 of the report.

5.0 **PROMOTION OF LICENSING OBJECTIVES.**

5.1 Appendix 3 replicates the applicant's operating schedule showing how they intend to promote the licensing objectives. Where appropriate, the operating schedule can be translated into conditions.

5.2 Applicants should give consideration to the local area and reflect this in their application. It should demonstrate an awareness of the local community, local crime and disorder issues and environment (see para 8.36 of the statutory guidance)

6.0 **RESPONSIBLE AUTHORITIES**

6.1 Police

The Police have submitted a representation on grounds of crime and disorder as a result of the fact that Hertfordshire County Council Trading Standards are currently investigating criminal activity associated with these premises.

6.2 Before the commencement of the formal consultation period, the applicant agreed the hours listed under paragraph 3.5 and operating schedule

conditions with the Police in relation to crime and disorder and street drinkers.

6.3 Licensing Authority

As the premises are currently under investigation by Hertfordshire Trading Standards and pending prosecution, the Licensing Authority have concerns regarding confidence in the management of the premises and their ability and willingness to comply with the terms of any alcohol licence granted.

6.4 The Licensing Authority have also outlined that Market Street is covered by the Council's Sensitive Licensing Area policy due to the historic issues associated with street drinkers. This area experiences a degree of alcohol related anti-social behaviour, street drinkers congregating and public nuisance from street drinkers.

6.5 Both the authorities do not wish to risk undoing the efforts of the Council and Police in addressing the anti-social behaviour issues by granting a licence to premises owner who does not seem to be responsible at this point in time.

6.6 No other responsible authorities have submitted representations against this application.

7.0 **INTERESTED PARTIES**

No representations were received from any interested parties.

8.0 **POLICY CONSIDERATIONS**

8.1 The following provisions of the Licensing Act 2003 apply to this application:

- Sections 17 and 18 (Application for a premises licence):
Section 17 details the process which the applicant must have followed for the application to be considered valid. Section 18 describes the process by which an application for a premises licence is determined, including where relevant representations have been made as in this case.
- Sections 19 and 19A (Mandatory conditions):
Section 19 details the mandatory conditions that would apply if the sub-committee was minded to grant a licence authorising the supply of alcohol. Section 19A permits the Secretary of State to specify additional mandatory conditions which apply to all Premises Licences.
- The Licensing Act 2003 (Hearings) Regulations 2005 (as amended)
These regulations detail how hearings should be conducted to determine applications submitted under the Licensing Act.

8.2 Statutory guidance

The following provisions of the statutory guidance apply to this application:

- Paragraphs 8.33 - 8.41
These paragraphs explain how steps should be taken to promote the licensing objectives. It is for the Sub-Committee to decide in light of this guidance whether the measures offered by the applicant are adequate and likely to promote the licensing objectives. It is equally important to use the same measure when looking at any steps requested by a party making representation against an application.
- Paragraph 9.12
This paragraph explains how the licensing authority should accept all reasonable and proportionate representations made by the Police unless the authority has evidence that to do so would not promote the licensing objectives. However, it is still the responsibility of the Police to ensure that their representations can withstand scrutiny.
- Paragraphs 9.37 – 9.40
These paragraphs explain that hearings should be focussed on the steps considered appropriate to the promotion of the licensing objectives, as well as how appropriate weight must be attributed to the steps to promote the licensing objectives, the representations presented by all parties, the statutory guidance and the licensing authority’s statement of licensing policy.
- Paragraphs 9.41 – 9.43
These paragraphs explains that when determining applications, the authority’s determination should be evidence-based, as well as how to assess if a step is ‘appropriate’ for the promotion of the licensing objectives.
- Chapter 10:
This chapter looks at best practice in relation to conditions that may be attached to a premises licence by the Sub-Committee, should they believe that these are necessary to promote the licensing objectives. Any additional conditions requested by the responsible authorities should be considered with reference to this chapter.

8.3 Statement of licensing policy

The following paragraphs of the licensing authority’s statement of licensing policy apply to this application:

- Policy LP1 (Premises Definitions):
Under this policy the premises are defined as an “Off-licence”.
- Policy LP2 (Location and Operation of Premises):
Under this policy, this premises is identified as being located within a residential area. Our policy states that off-licences within residential areas should generally be permitted to sell alcohol for consumption off the premises during the normal hours they intend to open for shopping

purposes, unless there are very good reasons for restricting those hours and relevant representations have been received. In the case of individual shops that are known to be a focus of disorder and disturbance then, subject to relevant representations, a limitation on licensing hours may be appropriate. This policy also recognises that each application will be considered on its own merits.

- Policy LP 4 (Sensitive Licensing Areas)

This policy states that where an application is made within an area covered by this policy, the licensing authority will consider making representations and strictly apply policies LP6, LP7, LP8 and LP9 in relation to those premises.

Where additional representations have been made by other parties, our strict starting point in these areas will be to consider whether conditions will be appropriate to address those concerns or whether a refusal is justified on the basis that the licensing objectives would be undermined.

- Policy LP6 (Prevention of Crime and Disorder):

The applicant has not provided any evidence that a crime prevention audit has been carried out at the premises as suggested by this policy. This policy details the factors that will be considered when a relevant representation is received based on this licensing objective.

- Policy LP8 (Prevention of Public Nuisance)

Under this policy the committee will consider any necessary measures to deal with the potential for public nuisance and/or anti-social behaviour where relevant representations have been received.

- Policy LP9 (Protection of children from harm)

This policy details the licensing authorities approach when relevant representations are received in relation to protecting children from harm.

- Policy LP11 (Representations against Applications)

This policy recommends the type of information that should be included in a representation. It also explains how representations will be dealt with.

8.4 The Sub-Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in the Borough.

8.5 The Sub-Committee is reminded that the Human Rights Act 1998 guarantees the right to a fair hearing for all parties in the determination of their civil rights. The Act also provides for the protection of property, which may include licences in existence, and the protection of private and family life.

9.0 **CONDITIONS**

9.1 Consistency with operating schedule

The conditions agreed between the applicant and the Police form part of the operating schedule and can be found at appendix 3.

9.2 Pool of Model conditions

The licensing authority also has its own pool of model conditions and a number of these are included in the agreement reached between the Police and the applicant.

9.3 If the Sub-Committee is minded to place further conditions from the pool of conditions or modify the operating schedule then they may only be imposed where they are appropriate and proportionate for the promotion of licensing objectives.

10.0 **OFFICERS' OBSERVATIONS**

10.1 Strong concerns are held by the Police and the Licensing Authority about the effective and responsible management of the premises and the control measures for the achievement of the licensing objectives. Members may wish to question the applicant regarding the control measures in place and how they will ensure the premises are managed responsibly.

10.2 The Police have suggested awaiting the outcome of the current investigation prior to the determination of this application. Once the Police are satisfied there is no crime or connection with trading standards offences with any applicant or management of the premises they are open to revisiting an application in line with Hertfordshire Police Policy and Watford Council's Licensing Policy 2013-2018.

10.3 The representations submitted are currently of speculative nature in so far as at the time of writing this report it has not been established that an offence has been committed. The Sub Committee should attach such weight as they see fit to the representations in light of this and have regard to the fact that there are provisions under the Licensing Act for dealing with any problems that may later manifest. It should be noted that the criminal prosecution is listed for hearing on 26 April 2016. Officers will give a verbal update of the outcome of the hearing.

10.4 Paragraph 1.17 of the Guidance states that :

Each application must be considered on its own merits and in accordance with the licensing authority's Statement of Licensing Policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premise and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where

there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case”.

10.5 Para 9.39 of the Guidance states:

“The licensing 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.”

10.6 Whilst operating as a convenience store there is a history of one complaint in 2010 to do with sale of alcohol without a licence and illegal sale of cigarettes. Further observations failed to yield evidence.

10.7 The premises falls within a Sensitive Licensing Area and it is for Members to decide how much weight to give to the representations whilst considering its relevance in the current circumstances and paragraph 8.36 of the Guidance. The Sub-Committee must also decide on how much weight to give to the applicants’ representations, and the fact that the Police and Licensing Authority have made representations.

10.8 The officers’ observations and the comments regarding the representations are in no way meant to bind Members. Members should note that policy LP4 will not automatically lead officers to make representations on every occasion. They are for guidance only and Members may attach whatever weight they see fit.

10.9 In determining this application, the Sub-Committee must have regard to the representations and take such steps as it considers appropriate for the promotion of licensing objectives. The steps are:

- (a) grant the application in full.
- (b) modify the conditions of the licence volunteered by the applicant in the operating schedule, by altering or omitting or adding them.
- (c) refuse the whole or part of the application.

Appendices

Appendix 1 – map of the premises’ location

Appendix 2 – plan of the premises

Appendix 3 – operating schedule

Appendix 4 – representation from Hertfordshire Constabulary

Appendix 5 – representation from licensing authority

Appendix 6 – draft licence (16/00339/LAPRE)

Background Papers

The following background papers were used in the preparation of this report. If you wish to inspect or take copies of the background papers, please contact the officer named on the front page of the report.

Licensing Act 2003

Revised guidance issued under section 182 of the Licensing Act 2003 (March 2015)

Licensing Act (Hearings) Regulations 2005

Watford Borough Council Licensing Policy (November 2013)

Watford Borough Council Pool of Model Conditions (March 2013)

File reference

SMAK