

PART A

Report to: Licensing Sub-Committee
Date of meeting: 22 September 2016
Report of: Head of Community and Customer Services
Title: Application for a new Premises Licence
Candies, 75 The Parade, High Street, Watford WD17 1LN
16/01069/LAPRE

1.0 SUMMARY

- 1.1 An application has been received from Candies Ltd for a new Premises Licence for the premises at 75 The Parade, High Street, Watford. The premises are applying for permission to sell alcohol for consumption off of the premises during the hours of 08:00-22:00, Monday to Sunday.

Representations have been received from one neighbouring business.

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
The premises are described on the application form as follows:

“Currently, Candies Ltd is operating as a newsagent, confectioner, tobacconist and retail outlet.”

3.3 Under policy LP1, the proposed use would be defined as an off-licence.

3.4 A map of the location of the premises is attached at appendix 1.
A plan showing the layout of the premises is attached at appendix 2.

3.5 Licensable activities

This application is requesting permission for the following licensable activities

Licensable activity	Requested
Plays	
Films	
Indoor sporting events	
Boxing or wrestling entertainment	
Live music	
Recorded music	
Performances of dance	
Entertainment of a similar description to live or recorded music, or dance	
Provision of late night refreshment	
Sale of alcohol for consumption on the premises	
Sale of alcohol for consumption off the premises	✓

3.6 Licensable hours

The hours proposed in this application are detailed in the following table:

	Proposed Hours for Sale of Alcohol	Proposed Opening Hours
Monday	08:00 – 20:00	08:00 – 20:00
Tuesday	08:00 – 20:00	08:00 – 20:00

Wednesday	08:00 – 20:00	08:00 – 20:00
Thursday	08:00 – 20:00	08:00 – 20:00
Friday	08:00 – 20:00	08:00 – 20:00
Saturday	08:00 – 20:00	08:00 – 20:00
Sunday	08:00 – 20:00	08:00 – 20:00

- 3.7 There are no non-standard timings or seasonal variations requested in this application. If this application is granted, the premises would be able to trade these hours throughout the whole year.

4.0 **BACKGROUND INFORMATION**

- 4.1 The following background information is known about these premises:

4.2 Proposed Designated Premises Supervisor

Mrs Damyanti Modi, who holds a personal licence with reference LN/000009573/2016 from the London Borough of Harrow.

4.3 Current licences held

The premises is not currently licensed.

4.4 Closing date for representations

29 August 2016

4.5 Public notice published in newspaper

5 August 2016

4.6 Visits and Enforcement action

There have been no complaints to the licensing authority regarding this premises, although it is noted that the premises does not currently hold a licence. There have been no complaints logged against this premises which have required investigation by Environmental Health.

5.0 **PROMOTION OF LICENSING OBJECTIVES.**

- 5.1 The operating schedule submitted by the applicant to describe the steps that they intend to take to promote the four licensing objectives is attached at appendix 3.

6.0 **REPRESENTATIONS**

6.1 Responsible Authorities

No representations were received from any responsible authority.

Following discussions with the Police, the applicant did agree to certain conditions, and no formal representation was submitted.

6.2 Other Relevant Bodies

Representations have been received from the persons listed below.

6.3	Name	Address	Representative Body (Yes/No)	Relevance to which licensing objective(s)
	Mr Harminder Singh Chopra	65 The Parade, High Street, Watford	No	Public nuisance, crime & disorder

6.4 These representations are attached at appendix 4.

6.5 The representations state concerns over the potential impact that the grant of this licence will have on the licensing objective of the prevention of public nuisance, and that granting this licence will undermine the crime and disorder objective due to aggressive pricing and the desirability to sell counterfeit alcohol in order to undercut the competition.

6.6 The objector has been advised to expand upon their concerns that granting this licence will be a source of public nuisance, so that the Sub-Committee can consider these details.

7.0 **POLICY CONSIDERATIONS**

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

- Sections 17 and 18 (Application for 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.
- 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.

7.2 Statutory guidance

The following provisions of the Secretary of State's guidance (March 2015) 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 appropriate to promote the licensing objectives. It is equally important to use the same measure when looking at any steps requested by a party making representations against an application.
- Paragraphs 9.30 – 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 explain 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 should it be believed that such conditions are appropriate to promote the licensing objectives. Any additional conditions requested by any party should be considered with reference to this chapter.

7.3 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 proposed operation would be fall under the definition of an off-licence.
- Policy LP2 – Location and Operation of Premises
This policy sets out the approach to licensing premises when relevant representations are received, notwithstanding that each application is considered on its own merits. This premises is situated within the town centre, and as such this policy states off-licences 'will generally be allowed alcohol sales to 8pm only'.

- Policy LP3 – Creating a Family Friendly Town Centre

This is a special policy which applies to this part of the town centre, which is intended to be strictly applied.

Paragraph 4 of LP3 states that ‘where relevant representations have been received, we will consider granting applications which limit the hours of operation to those set out in policy LP2 unless exceptions to LP3 can be shown’.

Exceptions to LP3

1. Exceptions will not be made on the grounds that:

- (1) the building design is of a high standard; we would expect that all applicants will want to ensure the highest design standards possible;
- (2) that the applicant is of good character. It is a legal requirement that premises selling alcohol must be under the management of a designated premises supervisor, who must themselves hold a personal licence to sell alcohol;
- (3) the premises are small. Even small premises can contribute to crime, disorder and nuisance.

2. We will consider whether to grant an application, even when relevant representations have been received, if:

- (1) the application contributes to the family-friendly development of the town centre; or
- (2) to effect a real reduction in capacity of alcohol sales; or
- (3) to replace a vertical drinking establishment with seated consumption and waiter service.

In any case where an applicant wishes an exception to be considered, the responsibility is with them to show why it should be considered and not on the Sub-Committee to show why an exception should not be made

- 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 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.

7.4 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.

7.5 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.

8.0 **CONDITIONS**

8.1 Members will be aware that an operating schedule forms part of the licensing process. This document outlines what activities are proposed, the opening hours, and how the activities will be managed particularly in respect of the licensing objectives.

8.2 The most critical part of the operating schedule is the steps taken by the applicant to promote the four licensing objectives. Applicants are always reminded to take careful consideration as to what is entered in this section as whatever is proposed will be translated as conditions on the licence.

8.3 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 the local environment.

8.4 Conditions consistent with the operating schedule
Officers do propose that the following conditions would be appropriate to attach to the licence to promote the licensing objectives, and are consistent with the applicant's operating schedule.

1. Staff at the premises shall receive training with regards to preventing the sale of alcohol to persons under the age of 18.

8.5 Conditions proposed by responsible authorities

The following conditions were proposed by the Police, and were accepted by the applicant to form part of the operating schedule.

1. No super-strength beer, lager or ciders of 5.5% ABV or above shall be sold at the premises.
2. No single cans and bottles of beer, lager or cider shall be sold at the premises.
3. No sales of miniature or quarter bottles of spirits of any kind.
4. The Licence holder and DPS will work closely with the Police to identify and restrict the sale of alcohol to street drinkers.
5. The premises shall install and maintain a comprehensive CCTV system to the satisfaction of Hertfordshire Constabulary. All entry and exit points will be covered enabling frontal identification of every person entering in any condition. The CCTV system shall continually record whilst the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 31 day period.
6. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open to the public. This staff member shall be able to show Police recent data or footage with the absolute minimum of delay when requested.
7. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.

8.6 Conditions proposed by objectors

There are no proposed conditions contained within the representations.

8.7 Pool of Model Conditions

In addition to any conditions proposed by the responsible authorities or objectors, the licensing authority also has its own pool of model conditions that may help mitigate the concerns raised in the representations.

8.8 Officers do not believe that there are any conditions within the pool of model

conditions which would be appropriate in this case. The representations state that granting this licence would undermine the licensing objective of the prevention of public nuisance, but do not go into further detail.

8.9 The representations refer to the pricing of alcohol and how it is foreseen that counterfeit alcohol will be sold to beat off competition. If any alcohol has not been purchased for sale legitimately, either because it is counterfeit, or because the correct duty has not been paid on the alcohol therefore making the sale price lower than alcohol which is subject to the full UK duty on alcohol, then this is already illegal and there are powers and legislation in existence to enforce against such sales. Therefore, it is not appropriate to attach conditions to address this specific issue. The licence would also be subject to the mandatory conditions for licences, which prevent the sale of alcohol for less than the 'permitted price'. This condition prevents alcohol for being sold below the cost of the duty and VAT paid on the alcohol.

8.10 This does not restrict the Sub-Committee's power to attach conditions from the pool (amended or otherwise) if they consider that they are appropriate, proportionate, justifiable and within the applicant's power to comply with.

8.11 A draft Premises Licence which reflects this application and the conditions which are proposed in the preceding paragraphs is attached at appendix 5.

9.0 **OFFICERS' OBSERVATIONS**

9.1 It is noted that this application is within the town centre, and therefore falls within the locations covered by Policy LP3. The representations do mention the council's licensing policy and the desire for the council to develop and maintain a family friendly town centre.

9.2 It is intended that Policy LP3 is to be strictly implemented, and this policy sets out that the starting point for certain applications should be to either refuse or grant an application. However, policy LP3 does not explicitly state that this policy is to be applied to off-licences. Policy LP3 specifically mentions the following types of premises:

- Pub
- Night-club
- Bar
- Restaurant
- Café-bar
- Other entertainment venue
- Café

- Premises providing other non-alcohol licensable activities

- 9.3 Therefore, it is the opinion of officers that the Sub-Committee would not be making an exception to Policy LP3 regardless of whether their decision is to grant this application, grant the application with limitations or extra conditions, or refuse the application.
- 9.4 Policy LP3 does mention that, where relevant representations have been received, we will consider granting applications which limit the hours of operation to those set out in Policy LP2, unless exceptions to Policy LP3 can be shown. Officers can advise that the terminal hour requested in this application for alcohol sales is 8pm, which is consistent with Policy LP2.
- 9.5 To demonstrate whether they are an exception, policy LP3 sets out three tests:
- (1) the application contributes to the family-friendly development of the town centre; or
 - (2) to effect a real reduction in capacity of alcohol sales; or
 - (3) to replace a vertical drinking establishment with seated consumption and waiter service.
- 9.56 Members are able to depart from policy in circumstances where there are justifiable reasons for doing so, and after considering the individual merits of the application before them.
- 9.7 The representations against this application make reference to how alcohol is already available in this area, and that there are so many off-licence facilities already in The Parade that denying one more would not inconvenience any potential customers. The question of whether another off-licence is required or suitable for this area simply because there are already licensed premises within the vicinity is not something that the Sub-Committee should consider. Members are reminded of paragraph 3.19 of the Statutory Guidance, which states:
- “There can be confusion about the difference between the “need” for premises and the “cumulative impact” of premises on the licensing objectives, for example, on crime and disorder. “Need” concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy.”
- 9.8 It should be noted that the representations have been submitted by the owner of a business situated within The Parade which does hold a Premises Licence

that allows off-sales of alcohol. The objector's business is a very similar business to the applicant's business, and is already in competition with the applicant's premises, being a newsagent and convenience store, but with the only difference being that the objector's business is the only business currently licensed to sell alcohol. If this application is granted, then the applicant and objector would be in direct competition over alcohol sales as well.

- 9.9 Officers advise that the Sub-Committee must believe that the representations made against this application are genuine representations, intent on voicing serious concerns over the application and the potential to undermine the licensing objectives, and not simply a means to prevent the emergence of a new competitor. If the representations put before the Sub-Committee are considered to have no correlation to the licensing objectives, or are related to concerns over commercial competition, then the Sub-Committee are directed to disregard these representations.
- 9.10 The representations mention that The Parade is already a drinking area, and how in the absence of the Police, The Parade is a drinking zone. Members are reminded that there is an Order in force in the town centre which makes it illegal for a person not to surrender open alcohol containers to the Police when requested to do so, for example because that person is engaging in anti-social behaviour. There is no automatic ban on alcohol being consumed within The Parade. This is how people who participated in the Big Screen event in the town centre were able to consume alcohol while watching the films on the screen. However, the licensing authority and the Police have been working with local businesses, and will continue to work with local businesses, to discourage the open consumption of alcohol within the town centre outside of any Big Event, and to risk assess the impact of the town centre Big Events.
- 9.11 The representation mentions that the number of off-licences will put pressure on the pricing of alcohol. Members are directed to paragraph 10.22 of the Statutory Guidance, which states:

“Where licensing authorities are asked by the police, other responsible authorities or other persons to impose restrictions on promotions in addition to those restricted by the mandatory conditions, they should consider each application on its individual merits, tailoring any conditions carefully to cover only irresponsible promotions in the particular and individual circumstances of any premises where these are appropriate for the promotion of the licensing objectives. In addition, when considering any relevant representations which demonstrate a clear causal link between sales promotions or price discounting and levels of crime and disorder on or near the premises, it would be appropriate for the licensing authority to consider the imposition of a new

condition prohibiting irresponsible sales promotions or the discounting of prices of alcoholic beverages at those premises. However, before pursuing any form of restrictions at all, licensing authorities should take their own legal advice.”

- 9.12 If Members were minded to consider attaching a condition to this particular licence regarding pricing, they will need to consider the impact that this will have on this premises, and how it will prevent this premises from competing fairly with other off-licences. Such an approach would need to be considered very carefully, and with a strong evidential basis, as this would be counter to the free market economy which is exercised by businesses. The guidance states that conditions should only be applied to cover irresponsible promotions. Members may wish to ask the applicant for their plans for promotions, but are reminded that this premises cannot currently sell alcohol and therefore should be very mindful that there is no evidence to suggest that there is causal link between the pricing regime in force at this premises and the and levels of crime and disorder on or near the premises. Such a decision should also only be made with consideration to the licensing objectives, and whether it is appropriate, proportionate, and within the applicant’s ability to meet such limitations.
- 9.13 Members are also reminded that the mandatory conditions which will apply to this licence will make it illegal for the premises to sell alcohol for a price which is less than the aggregate of the duty and VAT paid on the alcohol (the ‘permitted price’). This effectively sets a minimum price for the alcohol, and makes it illegal for any alcohol to be sold for less than this price. This is a mandatory condition, set by statute, and will automatically apply to this licence, as well as all other licences which permit the sale of alcohol. This condition specifically does not ban alcohol promotions, provided that the price of the alcohol is not less than the ‘permitted price’, as confirmed by paragraph 10.60 of the Statutory Guidance.
- 9.14 The representations state that this application will undermine the licensing objective of the prevention of public nuisance. Members may wish to ask the objector to expand upon this comment, and provide further details as to why it is believed that this application will undermine the prevention of public nuisance. Any such details must only be an expansion upon the points raised within the representations, however, and not introduce new elements. Any new evidence which is intended to be presented, without prior disclosure, may only be accepted with the agreement of all parties, including the applicant.
- 9.15 Members are also reminded of paragraph 2.20 of the Statutory Guidance, which states that beyond the immediate area surrounding a licensed premises,

individuals are responsible for their actions. If a customer of an off-licence decides to engage in anti-social behaviour either while, or as a result of, consuming alcohol, but that alcohol was purchased legally, then it is the customer that is liable for their behaviour, and not the licensed premises.

- 9.16 The officers' observations and the comments regarding the representations are in no way meant to bind Members. They are for guidance only and Members may attach whatever weight they see fit.
- 9.17 Members are also to attach whatever weight they see fit to both the submissions of the applicant, and to the submissions of the objector, when considering this application.
- 9.18 The Sub-Committee have a duty to "have regard" to the licensing policy but are not bound by it. However, should Members wish to depart from the policy then detailed reasons for this must be given as part of any decision.
- 9.19 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) reject the whole or part of the application.

Appendices

Appendix 1 – location plan

Appendix 2 – plan of premises

Appendix 3 – operating schedule

Appendix 4 – representation from Mr Chopra

Appendix 5 – draft licence (16/01069/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

Amended guidance issued under section 182 of the Licensing Act 2003 (Home Office March 2015)

Licensing Act (Hearings) Regulations 2005

Watford Borough Council Licensing Policy (November 2013 – November 2018)

Watford Borough Council Pool of Model Conditions (March 2013)

File Reference

Candies