

PART A

Report to: Licensing Sub-Committee
Date of meeting: 24 November 2016
Report of: Head of Community and Customer Services
Title: Application for a Premises Licence
DKSR Supermarket, 164 Whippendell Road, Watford, WD18 7NB
16/01411/LAPRE

1.0 SUMMARY

- 1.1 An application has been received from Mr Srithas Sundralingham for a new Premises Licence for DKSR Supermarket, 164 Whippendell Road, Watford. The premises are applying for permission to sell alcohol for consumption off of the premises during the hours of 10:00-23:00, Monday to Sunday.

Representations have been received from a neighbouring business and the licensing authority.

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:

For further information on this report please contact: Austen Young (Senior Licensing Officer) telephone 01923 278474: email: austen.young@watford.gov.uk

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 as follows:

“Premises is a convenience store which comprises of serving counter, sales area, shelving/displays, store room and a toilet”

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

3.4 The premises is located within a mixture of commercial and residential units, with residential units both above and opposite the premises. Under Policy LP2, this area would be held to be a ‘residential area’.

3.5 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.

3.6 Licensable activities

This application is requesting permission to provide 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	✓

3.7 Licensable hours

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

	Sale of Alcohol	Opening Hours
Monday	10:00 – 23:00	07:00 – 23:00
Tuesday	10:00 – 23:00	07:00 – 23:00
Wednesday	10:00 – 23:00	07:00 – 23:00
Thursday	10:00 – 23:00	07:00 – 23:00
Friday	10:00 – 23:00	07:00 – 23:00
Saturday	10:00 – 23:00	07:00 – 23:00
Sunday	10:00 – 23:00	07:00 – 23:00

3.8 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

Mr Srithas Sundralingham, who holds a personal licence with reference LN/000013872 from Ealing Council, issued 7 August 2006.

4.3 Current licences held

The premises is not currently licensed

4.4 Closing date for representations

3 November 2016

4.5 Public notice published in newspaper

14 October 2016

4.6 Visits and Enforcement action

It is acknowledged that the premises has not been subject to any recent enforcement action by the licensing authority or Environmental Health with regards to the operation of the business. However, it is also acknowledged that the premises does not currently hold a licence to sell alcohol.

4.7 The premises has been licensed before, and has been subject to enforcement action. This is referenced in the representations. This information is also public record. On 20 January 2010, Hertfordshire Constabulary applied for a review of the then Premises Licence, held by DKSR Limited, following repeated breaches of the licence between July 2009 and January 2010, which were witnessed by both council and Police officers, including trading after hours, selling persons who were already drunk (specifically, street drinkers)

and selling to children. Mr Sundralingham was both the designated premises supervisor at this time, and a director of DKSR Ltd, the licence holder. The review was supported by three other parties, and was opposed by one party. The review was heard by a sub-committee on 1 March 2010, where the licence was revoked. This decision was appealed the appeal was heard by magistrates on 23 June 2010. The magistrates dismissed the appeal, upholding the decision of the sub-committee.

- 4.8 In January 2011, an application for a new licence was received in the name of Mrs Selvaranee Srithas. It is understood that this is Mr Sundralingham's wife. Representations were received from the Police, and three other parties. In March 2011, this application was heard before a sub-committee, and the decision was to refuse this application. There was no appeal against this decision.
- 4.9 In September 2011, an application for a new licence was received in the names of Mrs Selvaranee Srithas and Miss Mounisha Srithas. It is understood that Miss Srithas is Mr Sundralingham's daughter. Representations were received from the Police and one other party. In November 2011, this application was heard before a sub-committee, and the decision was to refuse this application. There was no appeal against this decision.
- 4.10 In September 2012, an application for a new licence was received in the name of Miss Mounisha Srithas. Representations were received from the Police. In November 2012, this application was heard before a sub-committee, and the decision was to grant this application subject to additional conditions on the licence. These conditions covered the use of CCTV, a personal licence holder to be on the premises at all times, restrictions on the strength and quantities of alcohol to be sold, that alcohol should only be displayed in a specific area identified on the plan of the premises, signage clearly displaying the opening and licensed hours of the shop, the operation of a detailed incident log, and staff training, including a specific condition regarding training on preventing underage sales.
- 4.11 In January 2013, Hertfordshire Constabulary applied for a review of the new Premises Licence, held by Miss Srithas, following repeated breaches of the licence between November 2012 and January 2013 which were witnessed by Police officers. The breaches included stocking alcohol of a stronger strength than was permitted by a licence condition, selling individual cans and bottles of alcohol, selling miniature bottles of spirits, failing to complete the incident log with incidents of refusals and other incidents which were required to be recorded by condition, and training staff in the use of the CCTV system. This review was supported by Public Health. Immediately before the start of the

hearing in March 2013, Miss Srithas surrendered the Premises Licence. With no licence in force, the hearing was abandoned. As the licence was surrendered, there was no right of appeal.

- 4.12 The premises was visited on 4 November 2016 following an allegation that the premises was selling alcohol without a valid licence being in force. This allegation was contained within the representations received against this application. No evidence was found of any alcohol being stocked or sold at the premises.

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

Representations were received from the licensing authority acting as a responsible authority. These are attached at appendix 4.

- 6.2 No other responsible authorities have made representations against this application.

6.3 Other Relevant Bodies

Representations have been received from the persons listed below.

Name	Address	Representative Body (Yes/No)	Relevance to which licensing objective(s)
Mr A Patel	150 Whippendell Road	No	Prevention of crime and disorder, prevention of public nuisance

- 6.4 These representations are attached at appendix 5.
- 6.5 The representations from the licensing authority make reference to the history of the premises and the applicant. The representations state that the licensing authority has no confidence in the applicant to promote the licensing objectives. Reference is also made to concerns over an increase in anti-social behaviour.

- 6.6 The representations from the other party also make reference to the history of the premises and the applicant. The representations state concerns over attracting street drinkers to the area and an increase in anti-social behaviour.
- 6.7 These representations also contain an allegation that the premises are currently selling alcohol, even though no alcohol licence is in force at the premises. As detailed in paragraph 4.12, no evidence has been found to support this claim.
- 6.8 In accordance with Policy LP11, officers must advise that representations from one other party were rejected as being frivolous, giving no valid grounds for making the representations. Officers can confirm that this person was notified as to why their representations were rejected.

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.
- 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.

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 9.13 – 9.19:
These paragraphs explain how licensing authorities should achieve separation in the roles of officers, by allocating different responsibilities to different officers, in order to prevent a conflict of interests. The representations from the licensing authority have been submitted by the Business Compliance Officer, and the application has been processed by Licensing Officers, keeping the roles separate as per the statutory guidance.
- 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 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 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
In accordance with the information as submitted with the application, officers would describe the premises as 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 a residential area, as such this policy states that licensable hours for off-licences 'will generally be allowed alcohol sales in accordance with the normal opening hours of the shop'.

- Policy LP4 – Sensitive Licensing Areas

The premises are located on Whippendell Road within a Sensitive Licensing Area (SLA). SLAs were introduced in the licensing authority's 2013 Statement of Licensing Policy to recognise community concerns about the impact that a concentration of licensable activities in a small geographical area has on the licensing objectives. This includes:

- (1) availability of stronger-strength alcohol to street drinkers leading to anti-social behaviour in the immediate vicinity of the premises
- (2) alcohol and/or late night refreshment being available at times that are significantly different from other premises in that area likely to have an adverse impact on the licensing objectives
- (3) litter and other nuisances from a concentration of late-night take-aways

Where an application for alcohol sales or late night refreshment has been received within an SLA, this policy states that the licensing authority will consider making representations and will 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)

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

- 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 approaches expected from applicants to promote this licensing objective, and what factors the sub-committee will take into account when considering concerns under this objective.
- 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. All staff engaged in the sale of alcohol will be trained in respect of their legal and social responsibilities whilst doing so. Staff shall also receive training in respect of the Premises Licence, including any conditions contained therein.
2. A record of staff training will be maintained at the premises and made available for inspection by the Police or an authorised officer of the licensing authority upon request.
3. A CCTV system shall be installed and maintained at the premises. Recordings shall be retained for 28 days and made available to the Police or an authorised officer of the licensing authority upon reasonable request.
4. No more than 10% of the total sales area shall be used for the display of alcohol products.
5. No beers, lagers, or ciders above 6.5% ABV shall be sold at the premises.
6. No single cans or bottles of beers, lagers, or ciders shall be sold at the premises.
7. No spirits in quantities of less than 350ml shall be sold at the premises.
8. No wines in quantities of less than 375ml will be sold at the premises.
9. All spirits shall be stored and displayed behind the sales counter of the shop.
10. All alcohol shall be covered during the hours when the premises are open to the public but the sale of alcohol is not permitted under this licence.
11. A notice shall be displayed in a prominent position at the exit of the premises asking customers to respect nearby residents and to leave quietly, not to loiter outside of the premises, and not to drink alcoholic products in the street.
12. The Premises Licence holder shall adopt and implement a 'Challenge 25' policy, whereby all customers who appear to be under the age of 25 shall be asked for proof of age when attempting to purchase alcohol.
13. The Premises Licence holder shall prominently display notices advising customers of the 'Challenge 25' policy.
14. The Premises Licence holder shall keep and maintain a register of all

refused sales. The refusals log shall contain details of the date and time of the refusal, a description of the attempted purchaser, description of the products they attempted to purchase, reasons as to why the sale was refused, and the name of the member of staff who refused the sale.

15. All records of refusals shall be kept on the premises and be made available for inspection by an authorised officer of the licensing authority, the Police, or Trading Standards.
16. Notices shall be displayed to advise customers that it is an offence to purchase alcohol on behalf of a person under the age of 18 years.

8.5 Conditions proposed by responsible authorities
None

8.6 Conditions proposed by other objectors
None

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 believe that the following condition from the pool of model conditions, modified to reflect the concerns raised in the representations, may be appropriate in this case:

1. The designated premises supervisor shall attend formal training courses with regards to their responsibilities under the Licensing Act 2003, and the prevention of underage sales, and provide evidence of attendance and passing such courses to the licensing authority.

8.9 The representations from the licensing authority state that the applicant displays a lack of understanding of the Licensing Act and their responsibilities under this Act. Reference is made to previous incidents of selling alcohol to underage people, and to the premises' impact on the local area. If there are concerns over such knowledge, officers would suggest that a condition regarding training in order to increase the level of knowledge around the Licensing Act may be appropriate. There are training bodies who offer courses which may meet these aims. It is prudent to name the aims of the training rather than a particular training course from a particular training body, and allows the applicant the ability to find a course which is suitable for them. If such a condition is held to be appropriate, Members are asked to consider whether this training should be completed within a certain time limit.

- 8.10 While the applicant is a personal licence holder, it is noted that this licence was obtained 10 years ago. Members are reminded that personal licence holders must receive training before they can be granted a licence. Although the Government has scrapped the need to renew a personal licence, there are no specific measures which prohibit refresher training.
- 8.11 It is noted that the application does propose conditions with regards to limiting the strength and quantity of alcohol which is to be on sale. These steps are held to be consistent in discouraging street drinkers, and specific concerns have been raised in regards to the anti-social behaviour of street drinkers in the representations. Such measures do appear on other licences throughout the Borough, including a nearby premises. The aim of such conditions is to detract street drinkers from using particular premises, thereby preventing them from congregating in the local area.
- 8.12 It is also noted that the premises advise that they will adopt a 'Challenge 25' policy. Policy LP9 states that applicants are expected to adopt a 'Challenge 21' policy as a minimum requirement when applying for a licence in order to promote the objective of the protection of children from harm.
- 8.13 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.
- 8.14 A draft Premises Licence which reflects this application and the conditions which are proposed in the preceding paragraphs is attached at appendix 6.

9.0 OFFICERS' OBSERVATIONS

- 9.1 It is noted that this application falls under Policy LP4 and the premises is within a sensitive licensing area. This policy states that the strict starting point for determining this application, and considering any representations against the application, will be to consider if conditions will be appropriate to address the concerns raised against this application, or whether a refusal is justified on the basis that the licensing objectives will be undermined.
- 9.2 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.
- 9.3 Members will see from the representations that reference is made to the history of this premises. Paragraphs 4.6 through 4.12 of this report provide

details on this history. Members must not re-examine the original decisions and whether it was right or wrong for the original decisions to be made. This information is provided here as factual information.

- 9.4 Members are reminded that they must consider this application on its own merits, and based upon the submissions put before them. Prior enforcement action against any premises does not mean that there is an automatic presumption for refusal, and Members must consider the application without prejudice. Any person has the right to apply for a licence providing that they are over 18 and propose to use the premises for carrying on licensable activities. Where representations have been made, as in this case, applicants have the right to an open and fair hearing, where they can put forward an argument as to why their application should be granted. This same right of a fair and open hearing is also extended to those parties making representations against this application. The history of the premises is mentioned in the representations and is presented as evidence, and it will be for Members to attach such weight to this evidence as they see fit.
- 9.5 To this end, Members are advised to question the applicant with regards to their circumstances between 2013, when the premises were last licensed, and the present day. In the representations from the licensing authority, there is a question over the applicant's suitability to run a licensed premises. Members are advised to investigate what training, if any, the applicant may have undertaken in this time, or what other evidence the applicant may wish to present as proof of suitability. Any evidence will need to be considered in line with the promotion of the licensing objectives, and Members may attach such weight as they see fit.
- 9.6 It should be noted that the representations from 150 Whippendell Road have been submitted by a business 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, but with the only difference being that the objector's business is 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.
- 9.7 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.

- 9.8 In paragraph 8.4, it is stated that the applicant has volunteered a condition that only a certain percentage of the sales area will be given over to alcohol. This condition is consistent with the licensing authority's pool of model conditions. However, Members are advised to consider if marking the licence plan to show the areas where alcohol will be displayed and stored may be easier to understand and clearer, or whether the addition of the caveat "... as agreed with the licensing authority" may also assist in clarifying this condition.
- 9.9 The representations refer to anti-social behaviour from street drinkers. Members are 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 any premises 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. If Members are satisfied that there are additional steps that the premises could take in order to assist dispersal from the immediate area, and that such steps are appropriate for the promotion of the licensing objectives, then these steps may be confirmed by being attached to the licence as conditions.
- 9.10 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.
- 9.11 Members are also to attach whatever weight they see fit to both the submissions of the applicant, and to the submissions of the objectors, when considering this application.
- 9.12 The Sub-Committee are reminded that they 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.
- 9.13 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 – representations from licensing authority

Appendix 5 – representations from Mr Patel

Appendix 6 – draft licence (16/01411/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

DKSR