

PART A

Report to: Licensing Sub-Committee
Date of meeting: 10 January 2018
Report of: Head of Community & Environmental Services
Title: Application for New Premises Licence
Smoky Boys, 274A St Albans Road, Watford, WD24 6PE
17/01452/PRE

1.0 SUMMARY

1.1 An application for a new Premises Licence has been received from Mr Sharif Rahman in respect of Smoky Boys, 274A St Albans Road, Watford, WD24 6PE. The application is requesting permission to sell alcohol and provide late night refreshment.

Representations have been received from one local business.

2.0 RISKS

2.1

Nature of Risk	Consequence	Suggested Control Measures	Response <i>(Treat, tolerate, terminate, transfer)</i>	Risk Rating (the combination of severity and likelihood)
Appeal against decision by applicant or objectors	Decision overturned by the courts with potential of costs being awarded against council if decision is not justified or legal	Determination of application given with detailed reasons and after considering evidence before the committee, the council's licensing policy,	Treat	2

		statutory guidance, and the legislation		
Judicial review of decision by applicant, objectors, or consultees	Negative perception of the council and its licensing system	Hearing process held in accordance with the legislation, the statutory guidance, and the council's licensing policy, with both applicants and objectors being given fair chance to present their arguments to the committee.	Treat	2

3.0 **RECOMMENDATIONS**

- 3.1 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 & Environmental Services

4.0 **APPLICATION**

- 4.1 Type of authorisation applied for
New Premises Licence

- 4.2 Description of premises
The premises are described on the application as a restaurant.

- 4.3 Under Policy LP1, the proposed use would be defined as a restaurant under our licensing policy, but officers do recognise that this would be a restaurant with take-away facilities.
- 4.4 The premises is located within a mixture of residential and commercial units. Under Policy LP2, this area would be considered to be a residential area.
- 4.5 A map of the location of the premises is attached at appendix 1.
- 4.6 A plan showing the layout of the premises is attached at appendix 2.
- 4.7 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	✓

4.8 Licensable hours

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

	Sale of Alcohol	Late Night Refreshment	Opening Hours
Monday	11:00 – 23:30	23:00 – 23:30	11:00 – 00:00
Tuesday	11:00 – 23:30	23:00 – 23:30	11:00 – 00:00
Wednesday	11:00 – 23:30	23:00 – 23:30	11:00 – 00:00
Thursday	11:00 – 23:30	23:00 – 23:30	11:00 – 00:00
Friday	11:00 – 23:30	23:00 – 23:30	11:00 – 00:00
Saturday	11:00 – 23:30	23:00 – 23:30	11:00 – 00:00
Sunday	11:00 – 23:30	23:00 – 23:30	11:00 – 00:00

- 4.9 The application does not request any non-standard timings or seasonal variations to the hours listed above.

5.0 BACKGROUND INFORMATION

5.1 The following background information is known about these premises:

5.2 Proposed Designated Premises Supervisor

None. Should a licence be granted, the licence holder will be able to nominate a designated premises supervisor through the normal application process. The absence of a DPS does not affect the application for the licence, but it would mean that no alcohol could be sold under any licence until such time as a DPS is nominated and that DPS holds a valid personal licence.

5.3 Current licences held

None

5.4 Closing date for representations

8 December 2017

5.5 Public notice published in newspaper

24 November 2017

5.6 Visits and Enforcement action

The premises has not been subject to any visits or enforcement action from the licensing authority in respect of its operation. However, it is acknowledged that the premises is not currently licensed.

6.0 PROMOTION OF LICENSING OBJECTIVES.

6.1 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.

7.0 REPRESENTATIONS

7.1 Responsible Authorities

No formal representations have been received from a responsible authority.

7.2 Both the Police and Environmental Health entered into discussions with the applicant with regards to accepting additional conditions. These conditions were accepted, and so no formal representations were submitted.

7.3 Other Relevant Bodies

Representations have been received from the persons listed below.

Name	Address	Representative Body (Yes/No)	Relevance to which licensing objective(s)
Northwood Estate Agents	278 St Albans Road, Watford	No	Public nuisance, crime and disorder, public safety

- 7.4 These representations are attached at appendix 4.
- 7.5 The representations make reference to how this business is in close proximity to the premises, and they detail how they have experienced vandalism to their property and anti-social behaviour. They further detail their concerns that this licence would lead to an increase in such problems by introducing another venue capable of selling alcohol, and also concerns over an increase in food litter due to the opening hours being extended. The representations also state how these are existing problems.
- 7.6 Officers can advise that the objectors were notified of the amendments to the application following discussions with the Police and Environmental Health.
- 7.7 In response, the objectors said that while some of these measures should provide effective monitoring, they still had concerns over litter and broken glass, and also public nuisance. This reply is attached at appendix 4A.

8.0 **POLICY CONSIDERATIONS**

8.1 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.

8.2 Statutory guidance

The following provisions of the Secretary of State's guidance (April 2017) apply to this application:

- Paragraphs 8.38 – 8.46:
These paragraphs explain how steps should be taken to promote the licensing objectives. It is for the Sub Committee to decide in the 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

measures when looking at any steps requested by a party making representations against an application.

- Paragraphs 9.31 – 9.41:
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 9.42 – 9.44
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.

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
In accordance with the information as submitted with the application, officers would describe the premises as a restaurant with take-away facilities.
- 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 on St Albans Road in within a mixture of commercial and residential premises, therefore this will be considered to be a residential area and this policy states that restaurants 'will generally be allowed alcohol sales to midnight only'.
- Policy LP4 (Sensitive Licensing Areas)
The premises are located on St Albans 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 geographic area has on the licensing objectives. This includes:

- availability of stronger strength alcohol to street drinkers leading to anti-social behaviour in the immediate vicinity of the premises
- 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
- 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. Members are asked to note that the licensing authority did not make representations against this application.

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 LP 6 (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 LP 7 (Public Safety)
This policy details the factors that will be considered by the Committee when a relevant representation is received based on this licensing objective. However, this acknowledges that conditions should not duplicate, enhance, or 'gold-plate' existing health and safety requirements except in specific circumstances.
- Policy LP 8 (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.

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 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.

9.2 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.

9.3 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.

9.4 Conditions consistent with the operating schedule

Officers do propose that the following condition would be appropriate to attach to the licence to promote the licensing objectives. This is consistent with the applicant's operating schedule and has been developed to make it explicit in its requirements.

- Any person selling alcohol shall have received adequate training in the licensing objectives and conditions of the premises licence. A written record of the content and date of training for each staff member shall be kept and made available to the licensing authority upon request. As a minimum training shall cover the requirements for ID as part of the age verification policy, how to detect proxy sales, the consequences of underage sales, how to detect and prevent sales to drunk people, and the responsibilities of staff.

9.5 Conditions proposed by responsible authorities

During the consultation period, the applicant agreed the following conditions with the Police:

- The PLH (Premises Licence Holder) or DPS (Designated Premises

Supervisor) shall ensure that orders for alcohol are dispatched to bona fide addresses only.

- The PLH shall advertise their age verification policy and inform customers before the sale is completed that age and identity verification may be required at delivery in accordance with the PLH's age verification policy.
- The PLH or DPS shall ensure that no alcohol is left with any person who is under the age of 18, or who cannot verify their age in accordance with the PLH's age verification policy. Where a customer cannot verify that they are 18 years old or older, the order shall be returned to the licensed premises.
- 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 light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping.
- The Premises Licence Holder or DPS shall make available data or footage recorded on the CCTV system relating to crime and disorder to a Police Officer or Authorised Licensing Officer within 24hrs of the written consent being submitted to the Premises Licence Holder or DPS at all times in accordance with ICO requirements. During any absence of the Licence Holder or DPS, a nominated person shall make available data or footage recorded on the CCTV system relating to crime and disorder to a Police Officer or authorised licensing officer within 24hours of the written consent being submitted to the nominated person at all times in accordance with ICO requirements.
- Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
- A log shall be kept detailing all refused sales of alcohol. The log should include the date and time of the refused sale and the name of the member of staff who refused the sale. The log shall be available for inspection at the premises by the police or an authorised officer of the licensing authority at all times whilst the premises is open.
- The licensee shall comply with all reasonable crime prevention and/or public safety measures that may be required by the Licensing Authority and/or the Environmental Health Officer and/or Hertfordshire Constabulary and which are consistent with the premises operating schedule.

- The Challenge 21 scheme shall operate at the premises. Any person who appears to be under 21 years of age and purchasing alcohol shall produce an acceptable form of identification (passport, driving licence and PASS accredited card).
- All sales of alcohol for consumption off the premises shall be in sealed containers only.
- In addition to any other training, the premises licence holder shall ensure all staff are trained to prevent underage sales.
- Clearly visible signage is to be displayed at points of sale indicating it is illegal to sell alcohol to people under the age of 18.
- Customers will not be permitted to drink outside the premises save for in any seated area authorised under a pavement licence.
- An incident log shall be kept at the premises for at least 6 months, and made available on request to an authorised officer of the licensing authority or the Police.
- Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.

The applicant also agreed the following condition with Environmental Health:

- The provision of late night refreshment shall be limited to either food consumed on the premises or food supplied for takeaway or delivery to a remote location which must be wrapped or packed in such a way so that it is supplied not for immediate consumption.

9.6 Conditions proposed by other objectors

Although no specific conditions have been proposed by the objectors, in their response to being notified of the additional conditions agreed between the applicant, Police and Environmental Health, they do state that they are seeking measures to be put in place that can prevent litter/glass and public nuisance.

9.7 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.

9.8 With regards to the concerns over litter and glass outside the premises, officers

would suggest the following condition from the pool of model conditions:

- All litter, to include discarded flyers, cigarettes, fast food packaging and any other litter, whether caused by the venue or not, to be cleaned from an area of 2.95m in all directions from the front of the Premises, such waste to be disposed of as trade waste by the Premises.

This condition is felt to be appropriate for the promotion of the licensing objectives, and to address the concerns of the objectors, in requiring the outside area to be cleaned to prevent accumulations of litter and glass. Officers have visited the site and measured the distance from the front of the premises to the kerb, and advise that this distance is 2.95m.

The pool of model conditions does contain a similar condition which states the following and which may be substituted for the one above:

- The pavement from the building line to the kerb edge immediately outside the premises, including gutter/channel at its junction with the kerb edge, shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements.

This second condition does not express a distance in each direction that must be cleaned, and simply states that the pavement immediately outside of the premises between the premises and the kerb must be cleaned. However, this condition does not state as clearly as the first that all litter and items collected by the premises must be disposed of as trade waste by the premises.

9.9 In relation to the concerns of the objectors over preventing anti-social behaviour, officers do not believe that there are any conditions in the pool of model conditions that would be able to address this concern specifically. As the original objection states, the licence holder cannot be held responsible for the conduct of individuals once they leave the premises. However, officers would suggest that the following condition may help in addressing the perception of the premises and its use:

- The supply of alcohol for consumption on the premises shall only be ancillary to the consumption of a meal in the premises, and by waiter service.

This condition is aimed at securing the use of the premises preventing it from being used solely as a vertical drinking establishment, and recognises the use of the premises as a restaurant.

9.10 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.

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

10.0 **OFFICERS' OBSERVATIONS**

- 10.1 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.
- 10.2 Officers can advise that the applicant's agent has been made aware of the comments from the objectors with regards to the additional steps that they are seeking with regards to preventing litter and glass outside of the premises, and anti-social behaviour. At the time of writing this report, no additional conditions have been suggested, but members may wish to enquire whether the applicant does wish to offer any further conditions.
- 10.3 The agent replied that they did not think that staff at the premises would be allowed to clean the pavement outside of the premises under the terms of the licence holder's insurance policy and also under issues of health and safety. Officers wish to advise, upon taking advice from Environmental Health, that there is nothing in the Health and Safety at Work Act, or other safety related regulations, that would prevent such an activity. The aim of the Health and Safety at Work Act and other legislation is to require premises and employers to identify risks, assess the risk and the potential impact, and put measures in place to reduce or prevent the risk. The ability to risk assess such an activity, and put measures in place to address any identified risks without incurring significant additional expenditure, is something that the licence holder can undertake and implement. Although officers have not been made aware of the specifics of this particular policy, it is our experience that such policies are never inflexible and this may be something that can be amended by the policy holder.
- 10.4 In reply to the point about preventing anti-social behaviour, the applicant's agent did advise that while the main use of the premises was a restaurant, they did want the ability for customers to be able to drink before and after a meal, therefore any condition which required alcohol to only be supplied with food may be too restrictive upon the business. Officers would therefore advise that the starting point for any conditions regarding the restriction of alcohol, or the supply of alcohol for consumption on the premises, should be based upon the wish of the premises to allow customers to consume alcohol both before and after food.

10.5 The representations mention that they understand that a licence holder cannot be held responsible for the conduct of individuals once they leave the premises. Members are reminded of para 2.21 of the statutory guidance which also covers this point as follows:

“Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.”

Members are asked to note that, in the conditions agreed with the Police, are conditions condition requiring signage to be displayed advising customers to respect the area.

10.6 The representations make reference to how they already experience anti-social behaviour and their concerns that granting this licence will add to these problems. There has been no evidence provided that explicitly links the existing use of this premises to anti-social behaviour, although officers do acknowledge the fact that this premises are not currently licensed for alcohol sales or late night refreshment. According to records from Environmental Health, this premises has been trading since April 2015. Although not trading with alcohol, the premises has been able to trade until 11pm since opening for the provision of take-away food. Members may wish to enquire as to whether litter from this particular premises has been a concern since the premises opened, and since it has been operating under the current management.

10.7 With reference to the representations, members are reminded that a sensitive licensing area is not the same as a cumulative impact policy. A cumulative impact policy, such as policy LP3 of the council’s licensing policy, presumes that an application be refused unless the application can be proven to not add to the cumulative impact of licensed premises within the area defined by the policy. A sensitive licensing area does not carry the presumption that an application may be refused, and the application must be considered upon its own merits and whether or not the premises risks undermining one or more of the licensing objectives. If there are any risks, the first step should be to consider if the concerns can be addressed through conditions, and only consider refusing an application where there are no alternatives, or the risk is such that a refusal is justified.

10.8 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.

- 10.9 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.
- 10.10 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.
- 10.11 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 – Layout plan

Appendix 3 – Operating schedule

Appendix 4 – Representations from Northwood Estate Agents

Appendix 4A – Additional representations from Northwood Estate Agents

Appendix 5 – Draft Premises Licence

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:

Smoky Boys