

PART A

Report to: Licensing Sub-Committee
Date of meeting: 2 March 2015
Report of: Head of Community and Customer Services
Title: Application for a new Premises Licence
Woody Express, 103 The Parade, High Street, Watford WD17 1LU
15/00061/LAPRE

1.0 SUMMARY

1.1 An application for a new Premises Licence has been received from Mr Cengiz Erpolat to licence the premises at 103 The Parade, High Street, Watford, for the provision of late night refreshment, Monday to Sunday.

Four representations have been received from responsible authorities, and one representation has been received from an interested party.

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
Woody Express does not currently benefit from a licence. The premises is situated within the Town Centre as defined by Policy LP3. The premises intend to operate as a take-away, and will therefore fall under the definition of a take-away under Policy LP2.

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

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

3.5 Licensable activities

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

3.6 Licensable hours

The requested hours are detailed in the table below.

	Late Night Refreshment	Opening Hours
Monday	23:00 – 04:00	11:00 – 04:00
Tuesday	23:00 – 04:00	11:00 – 04:00
Wednesday	23:00 – 04:00	11:00 – 04:00
Thursday	23:00 – 04:00	11:00 – 04:00
Friday	23:00 – 04:00	11:00 – 04:00
Saturday	23:00 – 04:00	11:00 – 04:00
Sunday	23:00 – 01:00	11:00 – 01:00

4.0 **BACKGROUND INFORMATION**

4.1 The following background information is known about these premises:

4.2 Designated premises supervisor

Not applicable as the premises have not applied to sell alcohol.

4.3 Current licences held

The premises is not currently licensed.

The premises was previously licensed for the provision of late night refreshment under a licence with reference 11/01411/LAPRE. This licence benefited from hours which pre-dated the existing licensing policy, and therefore was able to trade after 1am on most days. However, this licence was surrendered by the previous licence holder on 1 December 2014. Prior to this licence being surrendered, the premises had been licensed under the Licensing Act 2003 since November 2005 when the Act came into force. The premises was not licensed prior to November 2005.

4.4 Closing date for representations

8 February 2015

4.5 Public notice published in newspaper

23 January 2015

4.6 Visits and Enforcement action

There have been no visits or enforcement action against the premises since the licensing authority were made aware that Mr Erpolat had taken over this premises in early January 2015.

The former licence holders held the licence between September 2011 and December 2014. During this time, there were no complaints logged with the licensing authority, but there were two complaints logged with the Environmental Health team. One complaint was with regards to the rear yard and the amount of rubbish therein. It should be noted that no premises was named as the source of this rubbish, and the complaint did mention that passers-by threw their litter into the yard. This area is private land, and so it

is the landowner who has ultimate responsibility over this area. The second complaint was with regards to noise from the banging of pots and the emptying of rubbish. This was linked directly to the premises. The complainants did not supply any further information on the alleged nuisance, and so no further action was taken.

5.0 **PROMOTION OF LICENSING OBJECTIVES.**

5.1 The operating schedule that allows the applicant to describe any additional steps they intend to take to promote the four licensing objectives should this application be granted has been reproduced at appendix 3.

6.0 **RESPONSIBLE AUTHORITIES**

6.1 Licensing Authority

The licensing authority, in their role as a responsible authority, have submitted representations on the grounds of the prevention of crime and disorder and the prevention of public nuisance. These representations are attached at appendix 4.

6.2 Police

The Police have submitted representations on the grounds of the prevention of crime and disorder, public safety, and the prevention of public nuisance. These representations are attached at appendix 5.

6.3 Environmental Health

Environmental Health have submitted representations on the grounds of the prevention of public nuisance. These representations are attached at appendix 6.

6.4 Planning

Planning have submitted representations on the grounds of the prevention of public nuisance. These representations are attached at appendix 7.

6.5 Fire and Rescue Service

No representations

6.6 Trading Standards

No representations

6.7 Child Protection

No representations

6.8 Interested Parties

Representations have been received from the interested parties below.

6.9

Name	Address	Representative Body (Yes/No)	Relevance to which licensing objective
Central Town Residents' Association	c/o 31 St Johns Road, Watford WD17 1QB	Yes	Public nuisance

6.10 These representations are attached at appendix 8.

6.11 The recurring theme throughout the representations is with regards to the concerns that, by allowing this premises to open until a latest time of 4am, there is a potential for an increase in anti-social behaviour and public nuisance. The representations refer to how it is believed that a late closing time will keep more people within the Town Centre for longer, not assisting in quick dispersal, potentially increasing any existing nuisance earlier into the morning.

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 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.

- 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 9.30 – 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
Under this policy, the premises are best defined as a take-away.
- 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 (as defined in Policy LP3) and as such this policy states that take-aways 'will generally be allowed late-night refreshment sales to 1am only (other than for special occasions)'.
- 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 2 of LP3 states that 'where relevant representations about an application for a restaurant, café-bar, other entertainment venue, café or premises providing other non-alcohol licensable activities (as defined in policy LP1) are received, our starting point will be to grant the application subject to conditions to address those representations'. This paragraph is applicable because the premises have not requested alcohol as a licensable activity.

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.
 3. 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
Under this policy the Sub-Committee will consider any necessary measures to deal with the potential for crime and disorder where relevant representations have been received.
 - Policy LP7 – Public Safety
Under this policy the Sub-Committee will consider any appropriate measures to deal with the issue of public safety where relevant representations have been received.

- Policy LP8 – Prevention of Public Nuisance
Under this policy the Sub-Committee will consider any appropriate measures to deal with the potential for public nuisance and/or anti-social behaviour where relevant representations have been received.
- Policy LP11 – Representations About 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 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 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, 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 propose that the following conditions are consistent with the operating schedule submitted by the applicant (adapted where possible from the licensing authority's pool of model conditions), and are appropriate for the promotion of the licensing objectives.

1. All doors and windows shall be kept closed except for the immediate access and egress of persons
2. A notice shall be prominently displayed at the exit from the premises requesting patrons to respect the needs of local residents and leave the area quietly

8.5 Conditions proposed by the responsible authorities

As part of their representations, Environmental Health have proposed a number of conditions which they request be attached to any licence which is granted as a result of this application. These conditions are detailed in the representation which is attached at appendix 6. Officers have considered these proposals and would suggest that the following conditions are appropriate for the promotion of the licensing objectives:

1. No rubbish shall be moved, removed or placed in any external area between 23:00 and 07:00 on any day.
2. All litter, including food debris, which is associated with the use of the premises shall be cleared from within a 15 metre radius of the shop front at the close of business every day. All such rubbish to be disposed of as trade waste.
3. All customers shall be asked if they require a bag and serviettes for their food, and shall only be provided if required by the customer.
4. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly, and to dispose of their waste responsibly
5. A bin shall be provided for public use within the public area of the premises.

8.6 Conditions proposed by interested parties

No conditions were proposed by the interested party.

8.7 Pool of Model Conditions

In additions to any conditions proposed by the responsible authorities or interested parties, the licensing authority also has its own pool of model conditions that may help mitigate the concerns raised in the representations. Officers propose that the following conditions from the pool of conditions (amended according to the representations and suggested conditions from responsible authorities) are appropriate to be attached to the licence:

1. At least 1 SIA licensed door supervisor shall be on duty at the entrance of the premises whenever the premises is open to trade after 01:00. The door supervisor shall remain on duty until 30 minutes after the premises closes to the public.

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.

- 8.8 It should be noted that officers have proposed this condition based upon the application as it has been put before them requesting a latest closing time of 4am, and the concerns raised in the representations against this application.

However, should Members choose not to depart from the licensing policy, and if the premises do not successfully argue that they should be considered to be an exception to Policy LP3, then it may not be appropriate to proceed with such a condition.

8.9 A draft Premises Licence which reflects this application and the conditions which are proposed in the preceding paragraphs is attached at appendix 9.

9.0 OFFICERS' OBSERVATIONS

9.1 As stated above, Policy LP3 is intended to be applied strictly. Representations have been received about an application to extend the hours for the provision of late night refreshment within a restaurant, and so the Sub-Committee's starting point ought to be to consider granting the application subject to conditions to address the concerns raised in the representations.

9.2 Policy LP3 also states that where relevant representations have been received, the Sub-Committee may consider granting the application but with limits placed on the hours of operation in line with Policy LP2, unless the applicant can show they should be considered an exception.

9.3 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.

9.4 There is little evidence that this application does satisfy one of these tests. The requested hours of operation do not suggest that the premises will contribute as a family-friendly business. The premises is not replacing an alcohol led premises, and so tests (2) and (3) are not applicable. However, the onus of proving an exception still lies with the applicant.

9.5 The licensing authority and Environmental Health have both referred to the development of JSA House at 110 The Parade, High Street, Watford, within their representations. Officers can confirm that this building has been granted planning permission to be converted into 64 bedsits. Although the conversion has not yet been completed, officers do understand that preliminary works have commenced, and so it is anticipated that these properties will be completed and occupied at some time. However, the exact timescales are not known.

9.6 In paragraph 8.3, officers have not reproduced all conditions proposed by Environmental Health. It is not felt that it is appropriate to restrict delivery times or to apply conditions regarding music at this time. This application is to be treated on its own merits, but it must be noted that this premises has

operated as a take-away previously, albeit under different owners with a different management style. There are no recorded complaints regarding noise from deliveries, and so it is not felt that it is appropriate to include this as a condition because this has not proven to be an issue at this location. The applicant has not requested permission to play recorded music as a licensable activity, and so it is not felt that it is justifiable to attach conditions regarding music. The applicant has mentioned how they will ensure to have a sound system applied to the premises in accordance with current regulations within their operating schedule, potentially causing confusion, but they are allowed to play incidental background music without a licence, or to relay live radio broadcasts without a licence. Should these activities become a nuisance, then they can be investigated under the Environmental Protection Act 1990 and other noise and anti-social behaviour related legislation, and, if required, enforcement action can taken under the relevant legislation.

- 9.7 Members will have noted that their representations from Planning, attached at appendix 7, and that the permitted hours for this premises have been included with these representations. The applicant does have the right to apply to vary the licence without also varying the planning permission because the licensing and planning regimes are separate from each other and governed by different legislation. The Sub-Committee will be aware that they may not refuse an application simply on the grounds that the planning permission is insufficient or that planning has not been obtained.
- 9.8 However, the business will not be able to legally benefit from any extended hours under the licence until they have also successfully varied the planning permission for the premises. Trading in breach of the planning permission is an offence. It is the responsibility of the business to ensure that their planning permission is sufficient for their needs and to apply to vary their permission if they see fit.
- 9.9 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.
- 9.10 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.
- 9.11 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 – map of the premises' location

Appendix 2 – plan of the premises

Appendix 3 – applicants operating schedule

Appendix 4 – representations from licensing authority

Appendix 5 – representations from Police

Appendix 6 – representations from Environmental Health

Appendix 7 – representations from Planning

Appendix 8 – representations from Central Town Residents' Association

Appendix 9 – draft licence (reference 15/00061/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 October 2014)

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

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