

LICENSING SUB COMMITTEE

5 October 2023

Present: Councillor R Wenham (Chair)
Councillors L Nembhard and G Saffery

Also present: Sellathurai Sivakaran, Applicant
Suresh Kanapathi, Applicant's Representative
Amanda Conlon, Interested Parties
Jo Tomkins, Senior Licensing Officer, Hertfordshire
Constabulary

Officers: Senior Solicitor
Senior Licensing Officer (AY)
Democratic Services Officer
Democratic Services Officer (LM)

11 **Committee membership/ election of a Chair**

The Democratic Services Officer confirmed that the sub-committee would comprise Councillors L Nembhard, G Saffery and R Wenham.

The sub-committee was asked to elect a Chair for the hearing.

RESOLVED –

that Councillor Wenham be elected Chair for this hearing.

12 **Disclosure of interests (if any)**

There were no disclosures of interest.

13 **Application for a new Premises Licence - Expo Cash & Carry, 35 Market Street, Watford**

The Chair, Councillor Wenham, welcomed everyone to the meeting and asked all present to introduce themselves.

The Chair invited the Senior Licensing Officer to introduce the report.

The Senior Licensing Officer advised that the preliminary matters for members' attention would be addressed in the report.

The sub-committee received a report from the Senior Licensing Officer, which outlined an application that had been made by Expo Cash & Carry Ltd for a new Premises Licence for Expo Cash & Carry, 35 Market Street, Watford.

The Senior Licensing Officer presented his report to the sub-committee, which detailed the application for a new licence for Expo Cash & Carry and included remote alcohol sales and delivery. The suggested opening hours were outlined in a table in paragraph 4.12 of the application for a new premises licence. The original application was attached in Appendix 1. The premises were situated on Market Street. Under policy LP1, the premises were classified as an off-licence. According to policy LP2, the premises fell within a residential area characterised by a mix of commercial and residential properties.

Two representations were made - one from the Police emphasising concerns over all licensing objectives (Appendix 3) and another from a resident expressing concern about public nuisance (Appendix 4). No other representations were received. However, one representation was received after the consultation period which had been rejected.

Additionally, the premises fell within the Market Street sensitive licensing area as per policy LP4. In paragraph 5.6 of the report, it was highlighted that a different licence holder held an existing premises licence for this location. The application form stated that this application was for a new licence, asserting the current licence's ineffectiveness. The application sought different operating hours compared to the existing licence, and it was filed under a different licence holder's name.

Evidence was submitted before the hearing, consisting of three videos from Amanda Conlon and an email correspondence from Liam Fitzgerald that had been sent to all parties. It was confirmed by all parties that they had viewed this material before the hearing.

A video was submitted by the applicant on the morning of the hearing. During the discussion, the committee considered whether it could be viewed as all parties must agree to its submission. Amanda Conlon asked if she could also submit a video. The Chair agreed that both videos would be viewed, and the meeting was adjourned.

The sub-committee adjourned to view the videos.

The meeting reconvened.

The Senior Licensing Officer discussed the representations submitted by the Police, acting as a responsible authority, which could be found in Appendix 3. No

other responsible authority submitted representations. Officers had identified several conditions at paragraph 9.14 of the report which were consistent with the operating schedule and potential conditions at paragraphs 9.17 and 9.18. These were similar to conditions suggested by the Police. However, an agreement could not be reached during consultations between the Police and the applicant regarding these points.

There were no questions from Members.

There were no questions from the Applicant's Representative.

There were no questions from the council's Legal Advisor.

Representations

Jo Tomkins, Senior Police Licensing Officer, representing the Chief Constable spoke against the new premises licence application for Expo Cash & Carry, 35 Market Street. They had held discussions with the applicant's representative during the consultation period and informed them that the Police would not accept the hours on the application. The requested new hours were late-night refreshment from 11 p.m. to 1 a.m., Monday to Sunday. Additionally, the Police presented 21 proposed conditions, viewable in the report at paragraph 9.6. The agent did not accept the proposed conditions. Despite dialogues and emails, an agreement could not be reached. The Police objected due to extended operating hours potentially causing increased crime, disorder, and Anti-Social Behaviour (ASB), particularly as alcohol-related issues negatively impacted the area in the past. Market Street was included in LP4 sensitive licensing area due to these concerns.

The detrimental impact was further emphasised, citing an example of a heavily intoxicated male who had caused issues in the area, reinforcing the need for restrictions. The Police stressed the necessity for confidence in controlling alcohol sales, ensuring they did not exacerbate the preexisting issues in the locality. The objective was to avoid undermining licensing objectives, which could contribute to anti-social behaviour and pose challenges for staff while adhering to responsible selling practices. It was the highest qualifier in the Watford area, exhibiting the highest rates of ASB, marking it as a hotspot. In the context of Market Street, certain businesses held grandfather licences, which were granted before changes were made to the licensing policy. These licences would come under scrutiny if issues had arisen necessitating a review or if there had been a request for a licence change.

Both the Police and the council needed assurance that the sale of alcohol would not negatively impact the area. It was crucial to maintain the licensing objectives

and ensure that alcohol sales did not contribute to ASB in the area. This was a matter of significant importance for the community and the authorities involved.

The applicant's representative, Suresh Kanapathi, spoke about the previous business owner of 35 Market Street's licence, which had the conditions the Police had recommended. He stated that the conditions were ineffective, and the applicant was departing from the premises as the business had failed. They asked if ASB had increased or decreased since 2021 in the area. Jo Tomkins responded, after reviewing the data, that the indication was that ASB had indeed increased, evident in logged calls, reported crimes, and residents' complaints. The situation was described as deteriorating, with the issue persisting and intensifying over time.

In the exchange, Suresh Kanapathi questioned Jo Tomkins about the extent of alcohol-related ASB based on the data mentioned. Jo Tomkins clarified that the data referred exclusively to alcohol-related ASB, distinguishing it from general nuisance. Suresh Kanapathi sought precise crime statistics for the street; however, Jo Tomkins could not provide exact data at this time. Suresh Kanapathi then inquired about reported incidents and inspections for the specific premises. Jo Tomkins outlined licensing inspections conducted with trading standards and noted entries in a refusal book concerning vape-related refusals but emphasised no reported incidents directly related to this premises.

Suresh Kanapathi requested to ask another question. Jo Tomkins confirmed that they had not encountered strong enough evidence to warrant a review of other business licences on Market Street.

There were no questions from Members.

The Senior Licensing Officer inquired about any proactive or voluntary actions taken by the premises, particularly regarding conditions related to restrictions on sales of single cans on Market Street. Jo Tomkins responded that the premises had yet to offer such measures proactively.

In response to questions from the Council's Legal Advisor, Jo Tomkins confirmed the date of the incident, that she had described in her statement, had occurred on 21 September 2023.

Amanda Conlon presented her concerns to the committee regarding Market Street, highlighting the pervasive noise and disturbances, particularly from individuals associated with the kebab shops who often gathered and sat outside on the steps. She expressed frustration, noting that they tended to remain in the vicinity even after the pubs had closed, leading to fights, public urination, and an intimidating atmosphere. Amanda Conlon stressed the lack of control over

people loitering outside the shops, causing distress and making it feel like living in a casino. She emphasised the detrimental impact on daily life, especially for those with early shifts, as the disturbances persisted and worsened, with an increasing number of intoxicated individuals on the street. Amanda Conlon emphasised the importance of balancing commercial activities and residential peace, expressing concern about the area's liveability if the situation continued. She also noted The Market Tavern's closing time and suggested a reasonable time for everyone to disperse, acknowledging the challenges posed by individuals lingering outside. Furthermore, Amanda Conlon highlighted the misleading effect of signage, giving an illusion of daytime and perpetuating disturbances. The Chair encouraged her to take a moment to ensure all her points were effectively communicated.

Suresh Kanapathi thanked Amanda Conlon for conveying the challenges she faced; he asked if these problems existed after 1 a.m. Amanda Conlon reiterated that, at times, the disturbances continued past 1 a.m., with people lingering, causing distress due to the absence of ambient noise.

The Chair inquired how many years Amanda Conlon had lived on Market Street. Amanda Conlon mentioned she has been a resident for nine years, being a homeowner. She explained that there was a significant turnover of residents due to the challenging living conditions, but she felt stuck in her current situation. Amanda Conlon clarified her proximity to 35 Market Street, highlighting that she was not disturbed by activities near 74 Market Street due to the distance, allowing her a certain level of respite from the surrounding activity.

The Senior Licensing Officer asked Amanda Conlon if she had any thoughts on possible conditions to address her concerns. Amanda Conlon preferred to keep the conditions as they were, comparing her living situation to the dystopian atmosphere of "Blade Runner." She emphasised the need to restrict the sale of single alcohol units and maintain reasonable closing times to prevent disturbances.

The Senior Solicitor sought confirmation from Amanda Conlon, summarising her experiences over the nine years in the area and her belief that no concessions should be made, emphasising the importance of the Licensing Act working collaboratively with all parties. Amanda Conlon reiterated her stance on maintaining the current conditions and reasonable closing times.

The Senior Licensing Officer clarified the existing alcohol sale times and the conditions outlined in the current licence, highlighting the limitations on alcohol strength and sales of miniatures and further discussed the procedures for varying hours, applying for new licences, and the consultation process involving advertising.

Address by the Applicant

Suresh Kanapathi addressed the sub-committee; he discussed how he had worked with the previous owner and licence holder of the business and that the business had subsequently failed. They argued that granting a licence extension to 1 a.m. would not significantly impact the area, given the existing problems and noise. Living on a high street, it was expected to contend with the inevitable noise. Bars and similar establishments were integral to the town's social life.

Amanda Conlon's primary concerns revolved around noise, particularly from other businesses on Market Street. Suresh Kanapathi discussed that there had been no improvement in the situation over the last two years, and no formal noise complaints were filed in the area during this period to Environmental Health and, therefore, was not seriously impacting other residents. They mentioned that only one resident objected to the licence. The Police could not provide evidence that crimes and ASB had been reported in the area in relation to this business.

Suresh Kanapathi explained that the business wished to have the opening and licensing hours matching unless any concerns were raised. However, they could see no concerns were identified. Addressing critical matters pertaining to the conditions of the licence was essential, and these were expected to be fair and proportionate. Unfortunately, the conditions proposed by the Police were viewed as failing to meet the criteria of fairness and proportionality. It was firmly believed that these conditions would likely have been overturned in a court of law.

The intention was to collaborate with local businesses and law enforcement agencies. The business aimed to cater to the community's needs, where individuals may have desired to purchase a single can for consumption at home. It was understood that denying them this option might have deterred them from returning. The fundamental objective was to promote the licensing objectives while ensuring the convenience and satisfaction of local residents.

Regarding the conditions proposed by Jo Tomkins, they agreed with conditions 1 to 6 but rejected conditions 7 to 10, emphasising their working relationship with the Police. They particularly opposed condition 8, which banned the sale of single cans, and condition 9, for which they requested data on related crimes. They also opposed condition 21, arguing it was unnecessary due to the experience and capability of the premises' operator. The remaining conditions, 11 to 20, were agreed.

The applicant, Sellathurai Sivakaran, held a licence in a similar area in Croydon. A copy of the premises licence was provided to Jo Tomkins. He effectively managed these premises. Notably, he consciously decided to refrain from selling strong beer, recognising its appeal to street drinkers and actively managing his establishment accordingly. Suresh Kanapathi agreed to condition seven.

Jo Tomkins wanted to respond to statements made during the applicant's representative submission. She addressed the impact of extending the opening hours to 1 a.m., asserting that it would significantly affect the situation. She discussed the practice of staggered closing times of pubs and bars to allow for the dispersal of patrons and offered midnight as a compromise to avoid clustering closures. Also she emphasised the need to set a precedent and considered the well-being of the neighbourhood's residents in their approach. She also highlighted the commitment of police resources daily to combat alcohol-related ASB and crime, disputing claims that the situation was unimportant to law enforcement. She pointed out that Environmental Health would handle noise complaints.

Suresh Kanapathi responded, expressing respect for the work of the Police. They emphasised the necessity for fairness and proportionality in decision-making, stressing that the ASB, being high in the area, needed a direct connection to the specific premises under consideration. They argued against penalising the establishment for broader issues in the vicinity, highlighting the proximity to the town centre and the need to differentiate between the business and the area's general circumstances.

Jo Tomkins emphasised their role in considering all parties and maintaining a fair approach towards licensing objectives. They mentioned their efforts to find a compromise and highlighted their commitment to fairness in the process.

Sellathurai Sivakaran clarified that they had lived in Watford for eight years, specifically in Nascot Wood. They detailed their experience with licensing and explained that they had a licence in Croydon.

Jo Tomkins asked Sellathurai Sivakaran to list the licensing objectives. He correctly identified three objectives: crime and disorder, protecting children, and public safety. The applicant demonstrated awareness of challenging someone who appeared underage during alcohol sales.

Jo Tomkins indicated their willingness to accept a closure time of midnight without further consultation.

The Chair provided clarification on the sub-committee's decisions regarding the proposed conditions. Condition 7 was accepted, indicating agreement on that

front. However, conditions 8 to 10 and condition 21 were not accepted by the Applicant.

Councillor Saffery inquired about the Sensitive Licence Policy and its last review. The Senior Licensing Officer clarified that the policy was last reviewed in 2018, with a subsequent review in 2021 focusing on the town centre. He mentioned that the full licensing policy was set to go to Council for further renewal in October, which kept the sensitive licensing areas. He highlighted the evidence threshold, stating that the Sensitive Licensing Areas and its justification were based on historical premises-related complaints.

Councillor Nembhard enquired if the applicant had researched the business case to extend the opening hours. Suresh Kanapathi mentioned that it was to target the audience from 11:30 p.m. to 1 a.m., returning home late and not just about alcohol sales. They argued that the extended hours were crucial for the business to meet local needs and maintain financial sustainability. Councillor Nembhard further raised concerns about managing potential issues with the extended hours and the need for security, drawing a comparison with East Croydon. Suresh Kanapathi assured the committee the applicant, Sellathurai Sivakaran, had extensive experience operating this business.

Councillor Nembhard asked if they had offered any compromise to the Police on conditions 8 to 10 and 21. Suresh Kanapathi stated they would not accept the Police conditions.

The Senior Licensing Officer pointed out the relevant case law of Thwaites emphasising the necessity of evaluating risks and establishing suitable conditions to manage them. A potential compromise was suggested regarding the strength of alcohol sales to tackle concerns related to street drinking. However, Suresh Kanapathi argued that the current approach in their business, which involved refusing sales to visibly drunk individuals, had been effective.

The Senior Solicitor confirmed for those present that the committee would listen to every party and make a decision based on the evidence presented to them.

The Senior Solicitor inquired about managing busy times and potential conflicts with just one staff member, and Jo Tomkins suggested that removing the sale of single cans could alleviate conflicts. Suresh Kanapathi defended their position, asserting that one staff member could manage without a complete ban on single-can sales, emphasising a fair and proportionate approach. The Senior Solicitor further inquired about the door's proximity to the counter and how quickly a staff member could reach it. Suresh Kanapathi mentioned the layout and organisation of the shop, stating that the setup allowed for efficient access

to alcohol from the counter. The Senior Solicitor expressed concerns about managing potential conflicts with just one staff member.

Summary

The chair ensured with all present whether they wanted to give a summary. Everyone confirmed they had expressed their thoughts and did not need to provide a summary.

The Sub-Committee retired to consider their decision.

Decision

RESOLVED –

The Sub-committee has decided to grant the Application for a new Premises Licence for Expo Cash & Carry, 35 Market Street, Watford amended with operating hours of 23:00-00:00 Monday to Sunday for late night refreshment, 08:00-00:00 Monday to Sunday for the sale of alcohol.

The Sub-committee has found that the licensing objectives of prevention of crime and disorder, the prevention of public nuisance, prevention of public safety and protection of children from harm are relevant to this application.

The Sub-committee has read all the information before them. The Sub-committee heard from the Police – Jo Tomkins, Amanda Conlon - Interested Party, Mr Sellathurai Sivakaran - the Applicant and Mr Suresh Kanapathi - Applicant's representative.

At the hearing, the Sub-committee heard from the Police on the history of visits and enforcement actions in respect of Market Street. The premises is located within the Sensitive Licensing Area of Market Street, an area that suffers with street drinkers and Anti-social behaviour. Information Data held by the Police shows that alcohol related Anti-Social Behaviour was the highest ASB Qualifier in Market Street from 1/8/2022 to date. Market Street had the highest incidents of Alcohol related ASB between 1/8/2022 to date. The Town Centre had the highest ASB Classification for rowdy or inconsiderate behaviour relating to Anti-Social Behaviour between 1/8/22 – 18/8/23, which the Police thought could be from people coming into the Town Centre from Market Street and neighbouring streets to congregate in the Town Centre. The Police operate a staggered dispersal in the Town Centre and stagger the closing times of the licensed premises so not all of them are closing at the same time, to reduce Crime and Disorder, Public Safety and prevent Public Nuisance.

The Police believe if the application were granted as requested, it would be detrimental to policing in Watford and to the community. It would impact on the wider community in terms of increased Anti-social behaviour and Crime and Disorder. The Committee heard how this would place a huge pressure on the local public services and Police.

In determining the application, the Sub-committee were mindful that their concern here is to be confident on the balance of probabilities that the licensing objective of the prevention of crime and disorder, protection of children from harm, the prevention of public nuisance, and public safety will be safeguarded and promoted if the application was granted.

The sub-committee has therefore decided to grant the application for the premises licence amended with a reduction in the hours and attach conditions 1 to 9, 11 to 20 proposed by the Police. The reasoning behind the decision was this Premise is located within the Sensitive Licensing Area of Market Street. Also having heard from the interested Party on the noise nuisance on the street and from the Police that alcohol related Anti-Social Behaviour was the highest ASB Qualifier in Market Street from 1/8/2022 to date, and that it had the highest incidents of Alcohol related ASB between 1/8/2022 to date, the sub-committee was of the view that granting the Premises Licence with reduced hours and attaching Conditions 1 to 9, 11 to 20 proposed by the Police would ensure the licensing objectives would not be undermined.

The Sub-committee is aware of and took into account any implications that may arise from the Human Rights Act 1998.

The Sub-committee had due regard for its public sector equality duty under section 149 of the Equality Act 2010 and consider that in reaching their decision they have fulfilled their duty under the Equality Act 2010.

In reaching their decision the Sub-Committee had due regard for all that they have read, seen and heard, and took into account the provisions of the licensing objectives, the Licensing Act 2003, s182 Guidance, and the Council's statement of licensing policy.

Chair

The Meeting started at 10.40 am
and finished at 1.20 pm