

LICENSING SUB COMMITTEE

19 January 2024

Present: Councillor R Wenham (Chair)
Councillor
Councillors T Osborn and G Saffery

Also present: Hardeh Bhatti, Senior Environmental Health Officer
Walaiti Rathore, Applicant representative
Bikram Rathore, Applicant representative
Richard Campbell, Applicant representative

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

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

The Democratic Services Officer confirmed that the sub-committee would comprise Councillors T Osborn, 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.

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

There were no disclosures of interest.

27 **Licensing Sub Committee Report - Papa John's 474 St Albans Road Watford WD24 6QU**

Preliminary matters

There were no preliminary matters raised.

The Licensing Officer presented the report for the application for a new premises licence received from PJ Corp Stores Limited to licence the premises at 474 St

Albans Road Watford WD24 6QU. One responsible authority had submitted representations.

There were no questions from Members.

Walaiti Rathore, the applicant representative, discussed the mediation between the involved parties. He sought confirmation that the emails had been duly received and read. Furthermore, despite ongoing efforts to reach an agreement, supplementary material was excluded, as it duplicated the content of the submitted emails. A specific observation was made concerning noise in the area. However, no substantiated evidence of noise originating from the premises in question was presented. It was, therefore, recommended that this aspect of the report be approached with caution. Apart from this consideration, the report's overall quality was deemed excellent.

There were no questions from the responsible authorities, Environmental Health.

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

Representations

Hardesh Bhatti, the Senior Environmental Health Officer, reviewed the application, deeming it unacceptable. The applicant's adjustment of proposed hours in accordance with police conditions, reduced from 5 am, did not alleviate the concerns raised. Consequently, in the view of the environmental health office, granting the license could potentially lead to public nuisance. Despite attempts at mediation, which proved unsuccessful, a recommendation was made for the applicant to conduct a noise survey. This survey aimed to demonstrate their understanding of existing noise situations, utilising the gathered information to identify impacts, implement controls, and facilitate the establishment of suitable conditions. The goal was to identify relevant and proportionate controls to the circumstances.

While St Albans Road was busy during the daytime, it was acknowledged that the environment tended to be quieter at night. However, there were nearby establishments, including Asda, McDonald's, and a petrol station, all of which operated with extended hours. Particular attention was given to the presence of residential units in close proximity to the business, underscoring the potential adverse impact on noise-sensitive locations. Despite their proximity, the nature of the businesses and potential impacts varied. Planning permission for the extractor fan was crucial, as proper control measures were essential to mitigate noise issues.

No planning permission was obtained for the extractor fan, leading to the absence of a noise survey. The lack of such a survey made it challenging to accurately assess the potential impact on noise levels, raising concerns about the possibility of public nuisance.

Concerns were raised about the need for more information regarding delivery operations, types of vehicles, and potential disturbances throughout the night. A noise survey was essential to understand and mitigate potential noise impacts comprehensively. The absence of controls pertaining to delivery vehicles, potential congregation, and the addressing of noise-related issues led to the recommendation for refusal.

In conclusion, the application was considered unsuitable until the applicant addressed and implemented adequate controls, which could be conditioned within the license. There were no similar premises in the area. If granted, it would have attracted people to the area, particularly considering the presence of a pub opposite. The concern was raised about how this influx of people would have been addressed, citing the example of Papa John's in the town centre, which had a different configuration. In light of these considerations a recommendation for refusal was made, pending the establishment of suitable controls to address the potential challenges associated with the grant of the premises license.

Walaiti Rathore asserted that the additional material, including the exchange of emails, indicated their involvement in mediation with the Senior Environmental Officer. However, it was noted that many of the points made today by the Senior Environmental Health Officer had yet to be raised. Additionally, emails had yet to be answered, prompting W Rathore to follow up for a response. He wanted to understand the reasons behind the lack of response and sought clarification. The Senior Environmental Health Officer responded, indicating they had raised concerns about insufficient information in the application and sought clarification on the conditions and their effectiveness. There was a perceived barrier to resolution and it was remarked that the process was going around in circles.

Councillor Saffery asked if it was standard practice for a noise survey to be conducted. The Senior Environmental Health Officer replied that the necessity of the survey depends on the location's context. In this instance, a noise survey specific to the unique area was recommended to protect residents and suggest suitable controls. The discussion addressed concerns related to vehicle noises and flue noises. The Senior Environmental Health Officer highlighted that a silencer would be required to mitigate flue noise levels.

Councillor Osborn inquired about the possibility of proposing electric vehicles. In response, the Senior Environmental Health Officer expressed the need to seek clarity from officers. He acknowledged that the technology for electric vehicles is available and could be utilised to protect residents.

The Senior Solicitor asked about the cost of the noise survey, and the Senior Environmental Health Officer stated that it would cost £1000.

There were no questions from the Licensing Officer.

Address by the Applicant

Walaiti Rathore, addressing the sub-committee, stated that his colleague Bikram Rathore would present the case shortly. Walaiti Rathore then elaborated on his own history in this area, mentioning that he had over 20 years of experience in Licensing, had collaborated with various local authorities nationwide, and had provided training for the Home Office in this area.

He asserted that in his experience a noise report or survey is not standard practice in licensing matters, unlike planning. He highlighted that this is not a planning committee, and the planning department had been consulted and had not made representations. Requiring a report at this stage, without evidence of problems, is highly unusual, and such reports are generally reserved for review hearings when significant issues arise.

Bikram Rathore presented arguments to the committee, advocating for the approval of the application, underscoring the agreement on conditions with the police and asserting the absence of logical or evidential grounds for refusal.

The emphasis was placed on considering only reliable and justified factors in accordance with the Licensing Act and council policy. The application revolved around late-night refreshment, deemed the safest licensable activity. Collaboration with the police resulted in agreed-upon conditions and reduced operating hours.

Key details from the licensing officer's report, found on pages 10-12, and the statement of licensing were highlighted, showcasing the applicant's extensive experience with 116 stores nationwide. Over 70 premises had licenses for late-night refreshments, operating until 5 am in London areas and working with responsible authorities.

Page 9 of the report noted takeaways were generally allowed until 1 am, and the reduced hours resulted in closing at 1 am, with an additional hour on Fridays and Saturdays. The application remained policy-compliant, addressing speculative

concerns raised by Environmental Health about noise from customers and delivery drivers.

Conditions 7, 8, 14 (pertaining to delivery drivers), 15, and 16 were designed to manage potential noise concerns, demonstrating proactive measures. The remaining 11 conditions upheld licensing objectives, actively deterring nuisance and pre-empting potential issues beyond Environmental Health objection (e.g., conditions 13 and 17).

Section 9.4.3 of the guidance stressed evidence-based and proportionate decision-making—no substantial evidence supported Environmental Health objections. Currently trading until 11 pm without complaints from responsible authorities, there was no indication of future issues. Environmental Health's objections were deemed speculative, generalised, and were characterised as a fishing expedition.

Environmental Health's request to address unknown issues was said to be inappropriate, especially when other responsible authorities, planning, and residents did not object.

In conclusion, Bikram Rathore's presentation highlighted the application's merits, the applicant's collaboration with the police and adherence to the police's conditions, and dismissed Environmental Health's speculative objections. The evidence-based and proportionate nature of the decision-making process favoured granting the application.

The Senior Environmental Health officer inquired about the recommended time of 11 pm, referencing communication standards and their integration into laws, such as the highway code and regulations regarding vehicle horns. Licensing applications in Camden since 2006 had mandated noise surveys, prompting Walaiti Rathore to respond by seeking clarification on the locations mentioned, confirming they were in London. Regarding the application, Walaiti Rathore highlighted the operation of 116 establishments under a franchise model across the country. In the last six months, approximately 30 similar establishments, situated in sensitive policy zones and challenging locations with residents, had been established. He emphasised that this type of premises was common, with many having late licenses extending up to 5 am. Conditions in this case were noted to surpass those imposed on comparable premises.

Councillor Saffery inquired about standard practice regarding noise surveys, expressing understanding of the unique context of the area. Walaiti Rathore responded that it was not standard practice, emphasising the presence of statutory provisions that had been diligently adhered to. He highlighted the permissive nature of the license, asserting that licenses are typically granted

unless there is evidence to the contrary. The burden of providing evidence rests on the objector. He noted that if complaints or issues had been presented, they would have been addressed, with efforts made to mitigate them. For the current proceedings, evidence was required, and if not provided, it could not be obtained retroactively. He suggested that the objector could have obtained a noise report themselves, though it was not standard practice, and the potential findings were unknown.

The Chair asked about the location of the deliveries from the restaurant, and it was confirmed that that location was at the front of the shop of the Richard Campbell, applicant representative.

The Chair inquired about any issues arising from the new hours, specifically addressing proactive measures. Walaiti, representing Papa John's and other large chains, responded that they had never been called upon to advise on enforcement issues.

Councillor Saffery questioned why a noise survey was considered unreasonable or disproportionate. Walaiti responded that there was no evidence that it caused any problems, and residents had been notified without anyone coming forward. He also mentioned that there had been no issues and that there was a review mechanism in place for addressing potential problems should they arise.

There were no questions from the Licensing Officer.

There were no questions from the Council's legal Advisor.

Summary

The Senior Environmental Health Officer summarised by recommending the refusal of the license due to insufficient evidence to meet licensing requirements. Despite this, they expressed a willingness to work with the applicant, starting with understanding the existing noise conditions.

The Applicant Representative, Bikram Rathore, summarised that Environmental Health had presented planning arguments deemed irrelevant to that day's committee. They emphasised the presence of a robust list of conditions agreed upon with the police and highlighted their credentials as a responsible operator. Referring to Page 8, Section 8.2, they argued that Environmental Health had failed to show evidence of a noise disturbance, characterising their objections as absurd and akin to a fishing expedition. The representatives asserted that they had tried to mediate. They contended that the objections did not meet the Thwaites test, which should be based on real evidence rather than speculation.

The representatives presented the applicant as comprehensive, standing up to scrutiny, and referenced Appendix 5, a draft premises license, as a well-reasoned final product. They urged the committee to grant the application, aligning it with the licensing act, case law, and the spirit of the licensing law.

Decision

RESOLVED –

The Sub-committee has decided to grant the application for a new premises Licence made by PJ Corp Stores Limited for Papa John's 474 St Albans Road Watford WD24 6QU.

The Sub-committee found that the licensing objectives of prevention of public nuisance is relevant to this application.

At the hearing, the Sub-committee heard the Police during the consultation period secured an agreement with the applicant to amend their application and attach specified conditions.

The Sub-committee read all the information before them, viz; representations against this application received from Environmental Health opposing the application.

Mr Hardesh Bhatti representing Environmental Health, raised concerns that allowing deliveries and collections past 23:00 is likely to generate nuisance from customers and delivery drivers at this location. This included the use of the service road to the rear. There were no indication of the types and control of vehicles that would be used for delivery. He was also concerned about the noise that would be generated by the flue. This noise is likely to impact many residents and could lead to public nuisance. This concern was exacerbated by the fact the applicant had not carried out or submitted a noise survey.

Representing the Applicant were Walaiti Rathore, Bikram Rathore and Richard Campbell, Senior Regional Operations Manager for Papa John. The Sub-committee heard from Mr Walaiti Rathore and Bikram Rathore.

Mr Rathore informed the sub-committee the aim of the company was to provide late night refreshment. The company had been in business for 20 years. Noise report/survey was not a standard practice for Licensing regime. The only instance he believed it might be required for Licensing would be for a review hearing.

The only objection before the Sub-committee was from Environmental Health. He was of the view that the conditions contained in the operating schedule as well as the 17 conditions agreed with the Police would address these concerns. CCTV, conditions 1, 2, 3 would serve a cross purpose of deterring crime and disorder as well as nuisance. Conditions 7, 8 13, 14, 15 and 16 would deal appropriately with concerns raised by Environmental Health. The conditions were robust, and the staggered closing would also serve to prevent nuisance.

There was no history of enforcement visits and action against the premises as it was not currently licensed.

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 attaching the conditions agreed with Police.

The reasoning behind the decision is, the Applicant has signalled from the conditions on the operating schedule and conditions agreed with the Police to be attached to the Licence, that it will be a responsible operator. The Applicant has shown a clear understanding of the licensing legislation, objectives, and requirements of licensing.

The sub-committee is of the view that granting the application with the Conditions agreed with the Police, will ensure that the four Licensing objectives would not be undermined.

The Sub-committee is aware of and considered 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 had read, seen, and heard. They took into account the provisions of Licensing Act 2003, the Licensing objectives, s182 Guidance, and the Council's statement of licensing policy.

Chair

The Meeting started at 11.00 am
and finished at 12.00 pm