

PART A

Report to: Licensing Sub-Committee
Date of meeting: Monday 23 September 2019
Report of: Licensing Officer (PS)
Title: Application for a variation of premises licence - Tharu Convenience Store

1.0 Summary

1.1 An application has been received from Tharu Convenience Store Ltd for a variation to the premises licence in respect of Tharu Convenience Store, 97 Eastbury Road Watford Herts WD19 4JP to vary the sale of alcohol by retail for consumption off the premises.

During the consultation period one representation has been received from a resident and nine letters in support of this application.

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, statutory guidance, and the legislation	Treat	2

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
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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: Parminder Seyan telephone: 01923 278434 email: parminder.seyan@watford.gov.uk

Report approved by: Justine Hoy, Head of Community Protection

4.0 Application

4.1 Type of authorisation applied for

To vary the hours for sale of alcohol by retail for consumption off the premises.

4.2 Description of premises

The premises is a convenience store with a Post-office.

The property is a ground floor shop and end of terraced building, comprising of a two storey building.

- 4.3 Under Policy LP1, the proposed use would be defined as an off licence with the sale of alcohol for consumption away from the premises. The premises is located within an area which can be described as residential or within a parade of local shops. Under policy LP2 this area would be defined as falling within a residential area.
- 4.4 A map of the location of the premises is attached at appendix 1.
- 4.5 A plan showing the layout of the premises is attached at appendix 2.
- 4.6 **Licensable activities**

This application is requesting permission to provide the following licensable activities

Licensable activity	Permitted now	Applied for
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	√	√

4.7 **Licensable hours**

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

	Proposed variation for off sale of alcohol	Existing off sale of alcohol	Proposed variation of opening hours	Existing opening hours
Monday	08:00-23:00	08:00-22:00	06:00-23:00	07:00-22:00
Tuesday	08:00-23:00	08:00-22:00	06:00-23:00	07:00-22:00
Wednesday	08:00-23:00	08:00-22:00	06:00-23:00	07:00-22:00
Thursday	08:00-23:00	08:00-22:00	06:00-23:00	07:00-22:00
Friday	08:00-23:00	08:00-22:00	06:00-23:00	07:00-22:00
Saturday	08:00-23:00	08:00-22:00	06:00-23:00	07:00-22:00
Sunday	08:00-23:00	08:00-22:00	06:00-23:00	07:00-22:00

5.0 Background information

The following background information is known about this premises:

5.1 Proposed Designated Premises Supervisor

Mr Sasikumar Rathinasingham is the designated premises supervisor who has been the DPS since March 2018.

5.2 Current licences held

19/00815/PREMV

5.3 Closing date for representations

23 August 2019

5.4 Public notice published in newspaper

2 August 2019

5.5 Visits and Enforcement action

There have not been any visits or enforcement action.

6.0 Promotion of the licensing objectives

6.1 The application indicates that to promote the four licensing objectives, the applicant intends to take steps as per the current licence and conditions which apply to this premises and which are attached at appendix 3.

7.0 Representations

7.1 Responsible Authorities

No representations were received from any Responsible Authorities.

7.2 Other Relevant Bodies

Representations have been received from the persons listed below.

Ref	Name	Address	Representative Body (Yes/No)	Relevance to which licensing objective(s)
Appendix 4	P Hawkins	95 Eastbury Road, Watford WD19 4JP	No	Public Nuisance

7.3 The above representations are attached at appendix 4 and made available to the applicant.

7.4 Mrs Hawkins lives in close proximity to the applicant's premises and has raised concerns that customers drive in her driveway and park to use this shop. Mrs Hawkins is also concerned that the hours to extend until 11pm is not needed.

The representations makes reference to nuisance where bags of empty drink bottles are thrown over her fence from the lane however there is no evidence presented which links to this premises.

Representations were also made in support of the application by nine residents/businesses and are attached at appendix 5. The supporters live or based in the following streets- Eastbury Road, Silkmill Road, Thorpe Crescent, Oaklands Avenue, Eastbury Court, MeadowBank, Woodwaye, Thorpe Crescent and Hampermill Lane.

8.0 **Policy considerations**

8.1 The following provisions of the Licensing Act 2003 apply to this application:

- Sections 34 and 35 (Variation of Licences):
 - Section 34 details how a licence holder can make an application
 - Section 35 details how determination will be made when an application is made under Section 34.
- 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 2018) apply to this application:

Paragraphs 8.41 – 8.49:

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 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 the best practice in relation to the 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.

Paragraph 10.14:

This paragraph refers to where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.

Paragraph 10.15:

This paragraph refers to how shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

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 an off-licence

Policy LP2 - Location and Operation of Premises

This policy sets out the approach to licensing premises when relevant representations are received, notwithstanding that each application is considered on its own merits. This premises is situated within a residential area, as such this policy states that off licences 'will generally be allowed alcohol sales in accordance with the normal opening hours of the shop'.

Policy LP6 – Prevention of Crime and Disorder

Under this policy the committee will consider any necessary measures to deal with the potential for crime and disorder where relevant representations have been received.

Policy LP8 - Prevention of Public Nuisance

Under this policy the committee will consider any necessary measures to deal with the potential for public nuisance and/or antisocial 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 The applicant has not listed any additional steps in their operating schedule, and have instead stated that they will rely on their existing operating schedule and conditions. The conditions which currently apply to this premises are contained within the current licence which is attached at appendix 3.

At the time of writing this report the applicant has proposed the following condition to mitigate the 'Other Persons' concerns which would be appropriate to attach to the licence to promote the licensing objectives:

“The premises licence shall display notices telling customers not to drop litter on the floor, and to park respectfully”.

9.5 **Pool of Model Conditions**

The licensing authority also has its own pool of model conditions that may help mitigate the concerns raised in the representations.

9.6 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.

9.7 A draft Premises Licence which reflects this application, the proposed hours and conditions is attached at Appendix 6.

10.0 **Officers' observations**

10.1 Concerns raised in the representations may not fall directly under the control of the applicant. Many of these issues will potentially arise whether the extended hours are granted or not. Issues such as parking, litter etc should be considered as matters of personal responsibility and the extent to which the applicant can exercise control is limited. The Sub-Committee's attention is drawn to paragraph 2.21 of the Statutory Guidance, which states that:

"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."

For the Sub-Committee to accept parking as a valid ground for objection, it must be satisfied that parking is relevant to one of the licensing objectives and if so, is likely to affect the licensing objectives. Members should note that there is in existence other primary legislation that can deal with any concerns relating to parking or blocking of driveways. There is no controlled parking zone. However any issues with blocking of driveways and parking will be matters for the parking service, Police or Highways service to address. Thus in order to avoid statutory duplication it may not be appropriate for the Sub-Committee to attach conditions relating to parking. Members may need to consider how the premises licence holder can influence and control such matters.

If Members are satisfied that there may be additional steps that the premises could take in order to assist dispersal from the immediate area, and that such steps are appropriate for the promotion of licensing objectives, then these steps may be confirmed by being attached to the licence as conditions.

10.2 The representation refers to empty drink bottles being thrown over the fence and nuisance caused by public from the lane. However it is not stated if these are currently caused by customers of this particular convenience store. Concerns about nuisance and antisocial behaviour may be legitimately taken into account based on the resident's evidence of the current situation. The Sub-Committee may note that at the time of writing this report officers are in the process of arranging a mediation which may curtail some of the concerns.

10.3 Members should be wary about refusing this application or imposing conditions unless they are satisfied that there is a direct link between the Tharu store and their customers and the litter issue mentioned in the representations.

Paragraphs 4.6 & 4.7 above lists the licensable activities hours which are currently permitted by Tharu's existing licence. These hours have already been granted, and are not subject to change as a result of this application. There are no records to suggest that there have been any incidents.

10.4 The support letter/petition forms were placed in the shop and requested to be completed by the applicant. These forms are identical. These forms need to be treated with caution as no reasons have been given for their support. It is for the Sub-Committee to decide whether to treat each support letter as individual or regard these as a form of petition with names and address and to place appropriate weight to them either individually or as a whole.

It is recommended that in borderline cases, the benefit of the doubt about any aspect of representations should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to clarify it.

10.4 The question of need is raised in the representations submitted against this application. Members are reminded that need is not something that the licensing Sub-Committee can take into account, as stated in paragraph 14.19 of the statutory guidance:

"There can be confusion about the difference between the "need" for premises and the "cumulative impact" of premises on the licensing objectives, for example, on crime and disorder. "Need" concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy."

10.5 Members are reminded that there is no cumulative impact policy in place for this particular area of the Borough.

10.6 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.

10.7 Members are able to depart from policy in circumstances where there are justifiable reasons for doing so, and after considering the individual merits of the application before them.

The Sub-Committee is reminded that they have a duty to "have regard" to the licensing policy but is 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.

In light of the hours requested and representations received it is for the Members to decide whether granting this application is likely to undermine the licensing objectives.

10.8 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 – Copy of current premises licence

Appendix 4 – Representations

Appendix 5 – Support letters

Appendix 6 – 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 April 2018)

Licensing Act (Hearings) Regulations 2005

Watford Borough Council Statement of Licensing Policy (2018 -2023)

Watford Borough Council Pool of Model Conditions (January 2018)

File Reference – Tharu Convenience Store