

## PART A

**Report to:** Licensing Sub Committee  
**Date of meeting:** Wednesday, 13 January 2021  
**Report of:** Licensing Officer (PS)  
**Title:** Application for a new premises licence - Green Pitta, 271 - 273 St Albans Road Watford WD24 5BJ

### 1.0 Summary

1.1 An application has been made by JDM Investments Ltd for a new premises licence in respect of 271-273 St Albans Road Watford WD24 5BJ.

1.2 As the premises is located in one of the identified Sensitive Licensing Areas within the Borough, the licensing authority's Sensitive Licensing Area policy applies. During the consultation period we received representations against this application from Environmental Health in their role as Responsible Authority and a representation in joint names from another party.

Members are reminded that representations are only relevant if they relate to one or more of the licensing objectives. The four licensing objectives are:

- the prevention of crime and disorder
- the prevention of public nuisance
- public safety
- the protection of children from harm

### 2.0 Risks

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	Determination of application given with detailed reasons and after	Treat	2

	against council if decision is not justified or legal	considering evidence before the committee, the Council's licensing policy, statutory guidance, and legislation		
Judicial review of decision by applicant, objectors or consultees	Negative perception of the council and its licensing system	Treat 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	1

### 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:

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**Report approved by:** Justine Hoy, Head of Community Protection

#### 4.0 **Application**

##### 4.1 **Type of authorisation applied for**

Application for a new premises licence. The original application is attached at appendix 1.

##### 4.2 **Description of premises**

4.3 The premises is located on St Albans Road, within a parade of shops and also in a residential area with residential flats being in close proximity to the premises. The premises falls under a Sensitive Licensing Area (SLA). Under Policy LP2, the premises would be defined as being a restaurant.

4.4 A map of the location of the premises is attached at appendix 2.

4.5 A plan showing the layout of the premises is attached at appendix 3.

##### 4.6 **Licensable activities**

This application is requesting permission to provide the following licensable activities

<b>Licensable activity</b>	<b>Requested</b>
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	√

In regards to the sale of alcohol for consumption off the premises, it is noted that such sales will only be available with take-away food only.

##### 4.7 **Licensable hours**

The amended hours are detailed in the following table.

	Sale of alcohol	Recorded Music	Late Night Refreshment	Opening hours

Monday	11:00-23:30	10:00-23:30	23:00-00:00	07:00-23:30
Tuesday	11:00-23:30	10:00-23:30	23:00-00:00	07:00-23:30
Wednesday	11:00-23:30	10:00-23:30	23:00-00:00	07:00-23:30
Thursday	11:00-23:30	10:00-23:30	23:00-00:00	07:00-23:30
Friday	11:00-00:30	10:00-00:30	23:00-00:30	07:00-00:30
Saturday	11:00-00:30	10:00-00:30	23:00-00:30	07:00-00:30
Sunday	11:00-22:30	10:00-22:30	23:00-23:30*	09:00-22:30

\*Officers are aware that the Sunday late night refreshment hours are longer than the opening hours but this was agreed between the Police and the applicant's legal agent.

The above hours are not the original hours as during the consultation period the Police and the applicant amended the proposed hours.

- 4.8 The applicant has requested non-standard timings and during the consultation period these hours were also amended as follows:

**New Year's Eve:**

Sale of alcohol : 11:00 – 01:00 hours

Recorded Music: 10:00 – 01:00 hours

Late night refreshment: 23:00 – 01:00 hours

5.0 **Background information**

The following background information is known about this premises

5.1 **Proposed Designated Premises Supervisor**

John Denis McGowan

5.2 **Current licences held**

None

5.3 **Closing date for representations**

15 December 2020

5.4 **Public notice published in newspaper**

20 November 2020

5.5 **Visits and Enforcement action**

The committee previously requested that we note the history of visits and enforcement actions for application premises. There is no history of visits or enforcement action against this premises, as the premises is not currently licensed.

6.0 **Promotion of the licensing objectives**

6.1 The operating schedule submitted by the applicant to describe the steps that they intend to take to promote the licensing objectives is included within the application form attached at appendix 1.

As a result of discussions with the responsible authorities, members are advised that the operating schedule and licensable activities hours have been amended since the application was originally submitted. These amendments and any conditions agreed with the responsible authorities are detailed later in the report.

### 7.1 **Responsible Authorities**

7.2 Environmental Health, as a responsible authority, has submitted a representation attached at appendix 4.

At the time of writing this report, to mitigate the responsible authority's representations the applicant proposed the following conditions and also further amended the hours as follows:

Conditions proposed by the applicant:

- A works condition: The premises will not open after 2300 until Conditions 2 & 3 of the planning permission are satisfied.
- No more than 5 persons will be allowed to be in the outside smoking area at any time.
- No deliveries will be accepted after 2100.
- No glass bottles will be emptied after 2100.
- Any amplified music will be played at a level that does not cause a public nuisance to nearby residents (this applied after 2300 only).

It has also been proposed to amend the closing time on Fridays and Saturdays to Midnight to match the granted planning hours.

The above proposed conditions and amended hours were forwarded to Environmental Health for consideration and as yet no agreement has been reached.

### 7.3 **Other Relevant Bodies**

One representations has been received from the person listed below.

Name	Address	Representative Body Yes/No	Relevance to which licensing objective(s)
James and Andrew Duffy	Bucknalls Lane Garston	No	Public Nuisance

7.4 The above representation is attached at appendix 5.

- 7.5 Officers are aware that concerns raised in the objection highlight that by operating early in the morning and late at night, seven days a week will potentially increase problems of noise, crime and disorder and anti-social behaviour and the effect this could have on residents.
- 7.6 The representation highlights that there is already a problem in the area with take-away customers parking on double yellow lines thus congregating, blocking the pathway, making access difficult and potentially dangerous for residents to walk home to their flats.
- 7.7 The objector has also raised concerns with regards to the level of noise, cooking smells and fumes which will inevitably reach the flat above the premises that has an outside terrace, which is a relaxing place. There is a reference to parking issues, litter and the level of rubbish this premises will generate.
- 7.8 The objector and Environmental Health were made aware of the amended hours and conditions that were agreed with the Police and mediation was offered to mitigate their concern which, at the time of writing this report, has not been taken up.
- 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 2018) apply to this application:

- **Paragraph 2.21:**  
 This paragraph explains that beyond the immediate area surrounding the premises, individuals are responsible for their own actions and are accountable in their own right. However, it may be reasonable for premises to display signage to inform customers to respect the rights of people living nearby, for example.
- **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 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 focused on the steps considered appropriate for 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:**  
 Under this policy the premises are defined as restaurant/bar.
- **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.

When issuing a licence, stricter conditions with regards to noise control and limitations to opening hours may be imposed in the case of premises which are situated in residential areas and are subject to relevant representations.

- **Policy LP 4 – 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 takeaways

Where an application for alcohol sales is made in a sensitive licensing area, the licensing authority will make representations and strictly apply policies LP6, LP7, LP8 and LP9 in relation to those premises.

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 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, and this policy highlights areas of particular concern.

- **Policy LP 8 – 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 its duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of its 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 which 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 agreed with responsible authorities**

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

1. The premises shall install and maintain a CCTV system. All entry, exit and point of sale areas will be covered by the cameras, and the images shall enable frontal identification of every person entering in any light condition. The system shall continually record whilst the premises is open for licensable activities and during all times when staff and customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Recordings shall be made available to a Police officer or an authorised officer of the licensing authority upon request throughout the preceding 31 day period, providing that such requests are in connection with the prevention or detection of crime.
2. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open to the public. This staff member shall be able to show a Police officer or an authorised officer of the licensing authority data or footage upon request.

3. The premises shall keep a suitable store of necessary recording media (such as DVD's, SD cards or similar) to enable footage to be recorded from the CCTV system and provided to an authorised officer of the licensing authority or Police officer upon demand.
4. Sales of alcohol for consumption off the premises shall only be supplied with, and ancillary to, a substantial take-away meal.
5. The designated premises supervisor shall ensure that tables are cleared of all bottles and glasses on a regular basis during trading hours to avoid an accumulation of glassware.
6. The supply of alcohol shall be ancillary to the supply of food.
7. Music amplification systems shall not be located in the entrance lobby or outside the premises building. Music amplification systems must not be directed outwards towards any street or installed externally to the Premises.
8. 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.
9. Customers will not be permitted to drink outside the premises save for in any seated area authorised under a pavement licence.
10. All sales of alcohol for consumption off the premises shall be in sealed containers only.
11. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
12. Clearly visible signage is to be displayed at the entrances and at points of sale indicating it is illegal to sell alcohol to people under the age of 18.
13. A log (which may be electronically recorded) 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 to a police officer or an authorised officer of the licensing authority at all times whilst the premises is open.
14. An incident log shall be kept at the premises for at least 12 months, and made available on request to a Police officer or an authorised officer of the licensing authority which will record the following:

- (a) all crimes reported to the venue, or by the venue to the Police
- (b) all ejections of patrons
- (c) any complaints received
- (d) any incidents of disorder
- (e) any failures or faults in the CCTV system.

15. The Premises must implement a “Challenge 25” policy whereby all customers who appear to be under 25 must produce photographic identification in the form of a passport, driving licence or Proof of Age Scheme (P.A.S.S) approved identification before being allowed to purchase alcohol.

16. Entry by children under the age of 16 to the premises is prohibited unless accompanied by an adult over the age of 18.

17. In addition to any other training, the Premise Licence Holder (PLH) or Designated Premises Supervisor (DPS) shall ensure all staff are trained to prevent underage sales, and a training record is kept and made available to Police or an authorised officer of the licensing authority upon request.

#### 9.5 **Conditions consistent with the operating schedule**

9.6 Officers have not identified any additional conditions which are consistent with the operating schedule submitted with this application. It is noted that some of the conditions agreed with the Police are similar to the steps volunteered within the operating schedule.

#### 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 In addition to the above, it seems the following condition may be appropriate to control noise to adjacent properties. The sub-committee may consider the following condition for the prevention of public nuisance:

“Patrons shall not congregate at any outdoor areas to the front or the side of the premises after 23:00 hours”.

9.9 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.

9.10 A draft Premises Licence which reflects this application and the conditions which are proposed in the preceding paragraphs is attached at appendix 6.

## 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 noise, smell, odour, litter and rubbish left on the streets by late night takeaway and antisocial behaviour. Members may wish to enquire whether the applicant wishes to offer any further conditions.
- 10.3 In relation to the objector's concern over preventing anti-social behaviour, officers do not believe that they would be able to address his concern specifically, as the 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."
- 10.4 Members to note that Police and the applicant agreed to the alcohol and pavement conditions however it seems the two conditions, condition 4 and condition 9 under conditions agreed with responsible authorities section do not appear to be consistent with each other as off sales shall only be permitted with take away. Should members wish to grant, they may consider disregarding condition 9.
- 10.5 In 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.

- 10.6 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 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.
- 10.8 The Sub-Committee is reminded that it has 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.
- 10.9 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 – Application

Appendix 2 – Location

Appendix 3 – Layout

Appendix 4 – EHO Representation

Appendix 5 – Other Persons Representation

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 Licensing Policy (November 2018 – November 2023)

Watford Borough Council Pool of Model Conditions (January 2018)