

PART A

Report to: **Licensing Sub Committee**
Date of meeting: **Wednesday, 10 March 2021**
Report of: **Licensing Officer (PS)**
Title: **Application for a new premises licence: Oaklands Wines, 35 Market Street Watford WD18 0PN**

1.0 Summary

- 1.1 An application has been made by Arka licensing consultants acting agents for Oaklands Wines for a new premises licence in respect of 35 Market Street Watford WD18 0PN
- 1.2 During the consultation period we received two representations from Other Persons.
- 1.3 Members are reminded that representations are only relevant if they related 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

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	Determination of application given with detailed reasons and after considering evidence	Treat	2

	not justified or legal	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:

For further information on this report please contact: Parminder Seyan telephone: 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**
- 4.2 Application for a new premises licence for the sale of alcohol by retail consumption off the premises. Alcohol is to be sold both from the physical premises and online. The original application is attached at appendix 1.
- 4.3 Description of premises**
- 4.4 The premises is a convenience store located in Market Street in a parade of shops and residential area with residential flats being in close proximity to the premises. The premises falls under a Sensitive Licensing Area (SLA). Under Policy LP1, the proposed use would be defined as an off licence with the sale of alcohol for consumption away from the premises.
- 4.5 Under policy LP2 the premises would be defined as a residential area, with there being a mixture of residential and commercial premises.
- 4.6 A map of the location of the premises is attached at appendix 2.
- 4.7 A plan showing the layout of the premises is attached at appendix 3. The property has a ground floor with a basement. The applicant proposes to operate from the ground floor and as well as from the basement level.

4.8 Licensable activities

This application is requesting permission to provide the following licensable activities

Licensable activity	Requested
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	✓

4.9 Licensable hours

The amended hours are detailed in the following table:

	Off sale of alcohol	Opening Hours
Monday - Saturday	08:00 – 00:00	08:00 – 00:00
Sunday	08:00 – 23:00	08:00 – 23:00

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

- 4.10 The applicant has not requested any non-standard timings or seasonal variations for the provision of licensable activities or opening hours.

5.0 Background information

- 5.1 The following background information is known about this premises and this application.

5.2 Proposed Designated Premises Supervisor

- 5.3 Joseph Thavarobert

5.4 Current licences held

- 5.5 None

5.6 Closing date for representations

- 5.7 12 February 2021

5.8 Public notice published in newspaper

- 5.9 29 January 2021

5.10 Visits and Enforcement action

- 5.11 Officers can advise since the submission of this application the premises applied for six temporary event notices which were withdrawn with the exception of one TEN for the 2.2.2021 – 7.2.2021 from 08:00- 01:00 hours which was not withdrawn. Committee Members may seek confirmation whether the premises operated during these dates and timings.

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.
- 6.2 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.

7.0 **Representations**

7.1 **Responsible Authorities**

- 7.2 The Police and applicant agreed a number of conditions and to be attached to any licence granted following this application, and as a result of this agreement, the Police did not submit any formal representations. These conditions are covered later in the report.
- 7.3 No other responsible authority requested any amendments to the application or submitted representations.

7.4 **Other Persons**

7.5 Representations have been received from the persons listed below.

Reference letter	Name	Address	Representative Body Yes/No	Relevance to which licensing objective(s)
4a	Amanda Conlon	Market Street	No	Public Nuisance
4b	Iveta Marijauskait	Market Street	No	Public Nuisance

7.6 These representations are attached at Appendix 4a and 4b.

Officers are aware that concerns raised in the objections highlight that by operating until late at night the premises will potentially increase problems of noise. One objector has raised concerns that the street is already too noisy with alcohol related noise and traffic and their quality of life will be drastically affected. The other objector advise that their concern is that their rest will be disturbed. Both representations have suggested that the premises should open until 11pm only.

Both objectors are concerned that there is a likelihood that this licence would lead to an increase in public nuisance.

The objectors were made aware of the amended hours and conditions that were agreed with the Police.

At the time of writing this report, to alleviate the objectors concerns the applicant has proposed the following conditions and amendments to the application:

1. We will put a clear signage to customers to consider the residents and leave the premises quietly.
2. The store will have deliveries to the store before 9pm daily to prevent any noise from delivery vans and staff unloading them.
3. The store staff will request any customers congregating outside the premises to move away to consider residences.
4. Reduce the terminal hour of the shop to midnight before the other shops close.

The above proposed controls measures were forwarded to both objectors for consideration but so far there has been no agreement.

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**

8.3 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 3.8 – 3.10:
These paragraphs focus on remote sales of alcohol and delivery of alcohol, and confirms that it is the premises where the alcohol is appropriated to the contract (i.e. the place where it is identified and specifically set apart for delivery to the purchaser) which requires licensing.
- 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 focussed 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.
- 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.

8.4 Statement of licensing policy

8.5 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 an off-liscence.

- **Policy LP 2 – 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 policy states that off-licences within residential areas 'will generally be allowed alcohol sales in accordance with the normal opening hours of the shop'. However, this does not fetter the Sub-Committee's discretion to impose conditions or to grant the licence for shorter hours than requested in the application should they feel it appropriate to promote one or more of the licensing objectives where relevant representations have been made.

- **Policy LP 4 – Sensitive Licensing Areas (SLA):**

The premises are located on Market Street within a Sensitive Licensing Area (SLA). SLAs were introduced 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. Officers can advise that no representations were received from the licensing authority.

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 LP 8 – Prevention of public nuisance:**
Under this policy the Sub-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.
- 8.6 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.
- 8.7 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 **Conditions agreed with responsible authorities**
- 9.5 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. 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.
3. All faults with the CCTV system shall be repaired as soon as possible and in any case within three working days after which time, if the system is still inoperative no licensable activities shall take place without the agreement of the Watford Police Licensing Unit and the licensing authority until the fault is rectified.
4. In addition to any other training, the premises licence holder shall ensure all staff are trained to prevent underage sales, to maintain the refusals book, enter sales correct on the tills so the prompts show when appropriate, and monitor staff to ensure their training is put into practise.
5. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.
6. No super-strength beer, lager or ciders of above 6.5% ABV (alcohol by volume) shall be sold at the premises.
7. No single cans or bottles of beer, lager or cider below 750ml shall be sold at the premises.
8. No sales of miniature or quarter bottles 25cl or less of spirits of any kind shall be permitted.
9. There shall be no self-service of spirits on the premises.
10. 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 by the police or an authorised officer of the licensing authority at all times whilst the premises are open.

11. An incident log shall be kept at the premises for at least 12 months, and made available on request to an authorised officer of the licensing authority or a police officer, which will record the following:
 - (a) all crimes reported to, or by the premises to the Police
 - (b) any complaints received
 - (c) any incidents of disorder
 - (d) seizures of fraudulent ID or other items
 - (e) any failures or faults in the CCTV system
12. 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.
13. The Premises Licence holder shall advertise their age verification policy and inform customers before the sale is completed online, that age and identity verification may be required at delivery in accordance with the Premises Licence holders age verification policy.
14. The Premises Licence holder or Designated Premises Supervisor shall ensure that online orders of alcohol are dispatched to bona fide addresses only.
15. Delivery staff shall be trained in age verification process and training records to be maintained on site.
16. No alcohol deliveries shall be made by post. All deliveries shall be made by courier company and a log shall be kept detailing all refused sales of alcohol including the date and time, and made available for inspection at the premises by the police or an authorised officer of the licensing authority whilst the premises is open.

9.6 Conditions consistent with the operating schedule

9.7 Officers have not identified any additional conditions to be attached to this licence which would be 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.

9.8 Pool of Model Conditions

9.9 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.

- 9.10 The Sub-Committee may consider the following condition as relevant and appropriate for the prevention of public nuisance:
- “A notice shall be prominently displayed on the premises requesting customers to respect the needs of local residents and leave the area quietly”.
- 9.11 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.
- 9.12 A draft Premises Licence which reflects this application and the conditions which are proposed in the preceding paragraphs is attached at Appendix 5.
- 10.0 Officers’ observations**
- 10.1 Officers can advise that the objections refer to the physical sale of alcohol from the premises and the likelihood of public nuisance associated with this operation, but not the online sales of alcohol from the premises. Members may wish to focus the hearing and any questions that any parties may ask on the aspect of physical alcohol sales in order to assess the potential risk associated with the use of the premises, to allow consideration of the representations, and in turn identify what steps, if any, are appropriate for the promotion of the licensing objectives.
- 10.2 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.
- 10.3 Officers can advise that the applicant’s agent has been made aware of the comments from the objectors with regards to Market Street being a one way street and the additional steps that they are seeking with regards to the noise from cars and people crowded outside talking loudly late at night. Members may wish to enquire whether the applicant wishes to offer any further conditions.
- 10.4 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.”

- 10.5 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 or the hours for providing licensable activities requested through this application by altering or omitting or adding to them.
 - (c) reject the whole or part of the application.

Appendices

Appendix 1 - Application

Appendix 2 - Location

Appendix 3 - Layout

Appendix 4a – Other Person Representations

Appendix 4b – Other Person Representations

Appendix 5 - 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)