

PART A

Report to: Licensing Sub Committee
Date of meeting: Tuesday, 13 July 2021
Report of: Senior Licensing Officer (AY)
Title: Application for new Premises Licence - Polski Supermarket Mieszko, 259-261 St Albans Road, Watford WD24 5BJ

1.0 Summary

1.1 An application has been made by Mieszko Foodcity Watford Ltd for a new premises licence for the premises at 259-261 St Albans Road, Watford WD24 5BJ. The premises will be known as Polski Supermarket Mieszko.

1.2 During the consultation period representations against this application were received from a local resident.

1.3 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 objector	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:

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Report approved by: Justine Hoy, Head of Community Protection

4.0 **Application**

4.1 **Type of application**

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

4.3 **Description of premises**

4.4 The premises is situated on St Albans Road. The premises is not currently licensed and has been formed after the sub-division of a larger premises.

4.5 Under policy LP1, the proposed use would be defined as an off-licence, where the premises are only licensed for sales of alcohol for consumption off the premises.

4.6 The premises is within the St Albans Road Sensitive Licensing Area (policy LP4). The area is a mix of commercial and residential properties, and as such would be defined as a 'residential area' for the purposes of policy LP2.

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

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

	Off-sales of Alcohol	Opening Hours
Monday	08:00 – 22:00	08:00 – 22:00
Tuesday	08:00 – 22:00	08:00 – 22:00
Wednesday	08:00 – 22:00	08:00 – 22:00
Thursday	08:00 – 22:00	08:00 – 22:00
Friday	08:00 – 23:00	08:00 – 23:00
Saturday	08:00 – 23:00	08:00 – 23:00
Sunday	08:00 – 22:00	08:00 – 22:00

4.10 The application does not request any non-standard timings or seasonal variations to the hours stated above.

5.0 **Background information**

5.1 The following background information is known about the premises.

5.2 **Proposed Designated Premises Supervisor**

5.3 Christopher Mitchener

5.4 **Closing date for representations**

5.5 18 June 2021

5.6 **Public notice published in newspaper**

5.7 4 June 2021

5.8 **Visits and Enforcement action**

5.9 The committee have requested that we note the history of visits and enforcement actions. There is no history of visits or enforcement action against this premises, although it must be noted that the premises are 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.

6.2 As a result of discussions with the responsible authorities, members are advised that the operating schedule has been amended since the application was originally made. These amendments and any conditions agreed with the responsible authorities are detailed later in this report.

7.0 Representations

7.1 Responsible Authorities

7.2 The Police and applicant agreed a number of conditions 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 submitted representations or agreed any additional steps with the applicant.

7.4 Other Relevant Bodies

7.5 Representations have been received from the persons listed below.

Address	Representative Body? (Yes/No)	Representations made on which licensing objective(s)
St Albans Road	No	Prevention of public nuisance

7.6 These representations are attached at appendix 3.

7.7 The objector has been made aware of the conditions that were agreed with the Police. At the time of writing this report, no response has been received to confirm whether the Police conditions address the concerns raised in the representations or whether they would like to see any alternative conditions. Members may wish to enquire as to the objector's views on these conditions.

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)
These sections detail the mandatory conditions that would apply if the Sub-Committee was minded to grant a licence authorising the supply of alcohol.
- 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:

- Paragraphs 2.15 - 2.21

These paragraphs concern the licensing objective of the prevention of public nuisance and give guidance on how it should be interpreted. With specific regards to noise, these paragraphs state that conditions will usually concern steps to control noise emanating from the premises and should focus on the most sensitive periods.

These paragraphs also explain 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 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 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.

8.4 **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-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 policy states that off-licences within residential areas 'will generally be allowed alcohol sales in accordance with the normal opening hours of the shop'.

- 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.

8.6 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 The applicant's original operating schedule for this application can be found in their application, which is attached at appendix 1.

9.5 **Conditions agreed with responsible authorities**

9.6 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 28 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 28 day period, providing that such requests are in connection with the prevention or detection of crime.
2. The Designated Premises Supervisor (DPS) or their delegate shall be conversant with the operation of the CCTV system, and shall be able to show a Police officer or an authorised officer of the licensing authority data or footage upon request.
3. The Premises Licence Holder (PLH) shall ensure that all tills in operation at the premises automatically provide age-related prompts to staff to check the age of the buyer when alcoholic products are passed through the till, or entered onto the till, for sale.
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, lagers or ciders of 6.5% ABV (alcohol by volume) or above shall be sold at the premises, except for Polish brand beers, lagers or ciders which may be sold up to 7% ABV.
7. No single cans or bottles of beer or cider shall be sold at the premises. All sales of cans or bottles of beer, lager or cider must consist of at least two cans or bottles.
8. No sales of miniature spirits of any kind shall be permitted (for the purpose of this condition a miniature is anything less than 20cl).
9. There shall be no self-service of spirits on the premises.
10. 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.
11. 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 is open.
12. An incident log shall be kept at the premises for at least 12 months, and made available on request to the DPS or Manager by an authorised officer of the licensing authority or the Watford Police Licensing Unit, which will record the following:
 - (a) all crimes reported to the premises or to the Police
 - (b) any incidents of disorder
 - (c) any failures or faults in the CCTV system
 - (d) all ejections of patrons
 - (e) seizures of fraudulent ID or other items
13. 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.
14. The Premises Licence Holder (PLH) or DPS shall ensure that orders of alcohol are dispatched to bona fide addresses only.
15. The PLH shall advertise their age verification policy and inform customers before the sales is completed that age and identity verification may be

required at delivery in accordance with the Premises Licence holder's age verification policy.

16. Delivery staff shall be trained in age verification process and training records to be maintained on site by the DPS.
17. No alcohol deliveries shall be made by post.
18. Notices shall be prominently displayed at exits requesting customers to respect the needs of local residents and leave the area quietly.

9.7 **Conditions proposed by other objectors**

9.8 The representations received state that they would be agreeable for the licence to be issued with a terminal hour of 8pm.

9.9 **Conditions consistent with the operating schedule**

9.10 Officers do not propose any additional conditions which are consistent with the applicant's operating schedule. It is acknowledged that some of the conditions agreed with the Police, specifically relating to CCTV, till prompts, 'Challenge 25', maintaining refusals and incident logs, are similar to steps volunteered in the operating schedule.

9.11 Officers are mindful that the representations ask for the premises to not operate beyond 8pm, but the operating schedule does state that the applicant wishes to be able to sell alcohol by online or telephone sales. Officers would ask members to consider whether it would be appropriate to attach conditions which state separate terminal hours for the opening times of the premises, which would dictate when customers would be allowed access to the premises, and for alcohol sales which could allow alcohol to be sold through remote orders after the premises has physically closed to customers.

9.12 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.

9.13 **Pool of Model Conditions**

9.14 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.

- 9.15 Officers have not identified any specific conditions from the pool of model conditions which are considered to be appropriate or the promotion of the licensing objectives in this case.
- 9.16 A draft Premises Licence which reflects this application and the conditions which are proposed in the preceding paragraphs is attached at appendix 4.
- 10.0 **Officers' observations**
- 10.1 As relevant representations in respect of this application have been received, and which have not been withdrawn, the Licensing Sub-Committee acting on behalf of the licensing authority must make a determination on this application.
- 10.2 Officers can advise that mediation was offered in this case, but at the time of writing this report both parties had not agreed to take up the offer of mediation.
- 10.3 The conditions consistent with the operating schedule may be modified to alter or omit any of them or to add any new condition, including restricting the times at which licensable activities may be permitted by the premises licence.
- 10.4 Members are reminded that both applicants and objectors have the right to expand upon their original submissions, but should not introduce new evidence unless provided and circulated before the hearing, or introduced at the hearing with the agreement of all parties present.
- 10.5 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.
- 10.6 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.
- 10.7 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.
- 10.8 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.

10.9 It is important that a licensing authority should give reasons for its decision in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal

Appendices

Appendix 1 – Location plan

Appendix 2 – Operating schedule

Appendix 3 – Representations

Appendix 4 – 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 (April 2021 – November 2023)

Watford Borough Council Pool of Model Conditions (January 2018)