

PART A

Report to: Licensing Sub Committee
Date of meeting: Thursday, 9 September 2021
Report of: Senior Licensing Officer (AY)
Title: Application for new Premises Licence - Abaco's Bar 2, 83B Whippendell Road, Watford WD18 7NH

1.0 Summary

- 1.1 An application has been submitted by Mrs Manuela Batista for a new premises licence for the premises at 83B Whippendell Road, Watford WD18 7NH. The premises will trade under the name of Abaco's Bar-2.
- 1.2 During the consultation period, representations against this application were received from the Police as a responsible authority and a local resident.
- 1.3 Members are reminded that representations are only relevant if they relate to one of 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
- 1.4 It is noted that the representations from the Police concern information relating to individuals and allegations of criminal offences, which for the purposes of the Local Government Act 1972 is considered to be exempt information and which the Licensing Sub Committee may choose to not discuss in a public meeting.

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	Decision overturned by the courts	Determination of application given with	Treat	2

applicant or objector	with potential of costs being awarded against council if decision is not justified or legal	detailed reasons and after 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:

For further information on this report please contact: Austen Young telephone: 01923 278474 email: austen.young@watford.gov.uk

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 Whippendell Road. The premises is not currently licensed but has previously been licensed and run as a bar and off-licence.

4.5 Under policy LP1, the proposed use would be defined as a 'café-bar'.

4.6 The premises is within the Whippendell Road Sensitive Licensing Area (policy LP4). The area is a mix of commercial and residential properties including a flat immediately above the premises. For the purpose of Policy LP2, the premises would be identified as being within a residential area.

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:

	On-sales of Alcohol	Opening Hours
Monday	10:00 – 22:00	08:00 – 22:30

Tuesday	10:00 – 22:00	08:00 – 22:30
Wednesday	10:00 – 22:00	08:00 – 22:30
Thursday	10:00 – 22:00	08:00 – 22:30
Friday	10:00 – 22:00	08:00 – 22:30
Saturday	10:00 – 22:00	08:00 – 22:30
Sunday	10:00 – 22:00	08:00 – 22:30

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 Manuela Batista

5.4 **Closing date for representations**

5.5 11 August 2021

5.6 **Public notice published in newspaper**

5.7 30 July 2021

5.8 **Visits and Enforcement action**

5.9 The committee have requested that we note the history of visits and enforcement actions.

5.10 It was alleged that the premises was selling alcohol in early June 2021 without holding a licence. Officers visited and found alcohol on display at the premises. The premises were advised to remove all alcohol from display. Evidence relating to these allegations was gathered by the Police and as such it was left to the Police to decide what further action, if any, they wished to take.

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.

7.0 **Representations**

7.1 Responsible Authorities

7.2 The Police have submitted representations against this application and these are attached at appendix 3.

7.3 The representations concern details of allegations of offences being committed at the premises and as such officers would advise that these representations are discussed in private excluding the press and public in order to avoid identifying individuals or potentially disrupt any ongoing or future criminal proceedings.

7.4 It is noted that certain individuals are named in the Police representations who are not the applicant. It will be for the Police to establish the connection between the individuals and the applicant and members are advised to only consider this evidence should such a connection be made. The Police must be held to prove the facts of their representations on the balance of probabilities.

7.5 No other responsible authority submitted representations against this application or agreed any additional steps with the applicant.

7.6 Other Relevant Bodies

7.7 Representations have been received from the persons listed below:

Name	Address	Representative Body (Yes/No)	Relevance to which licensing objective(s)
Irfan Ahmed	Durban Road East	No	Public nuisance

7.8 These representations are attached at appendix 4.

7.9 In accordance with our policy, officers can advise that three representations were rejected as not being valid. These parties were given the opportunity to respond and validate their comments but no response was received.

8.0 Policy considerations

8.1 Licensing Act 2003

8.2 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.

8.3 **Statutory guidance**

8.4 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.

8.5 **Statement of licensing policy**

8.6 The following paragraphs of the licensing authority's statement of licensing policy apply to this application:

- Policy LP1 – Premises definitions

Under this policy, officers would define this premises as a 'public house, wine bar or other drinking establishment'

- 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 café-bars will generally be granted licenses in accordance with the application.

- Policy LP6 – Prevention of crime and disorder

Under this policy the committee will consider any appropriate 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 LP8 – Prevention of public nuisance

Under this policy the committee will consider any appropriate 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.

8.7 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.

8.8 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 attached at appendix 1.

9.5 **Conditions agreed with responsible authorities**

9.6 No conditions have been proposed by a responsible authority or agreed with the applicant.

9.7 **Conditions proposed by other objectors**

9.8 There are no conditions proposed by any other parties to this application.

9.9 **Conditions consistent with the operating schedule**

9.10 Officers would propose the following conditions as being consistent with the applicant's operating schedule and being appropriate for the promotion of the licensing objectives:

1. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
2. The supply of alcohol shall only be by waiter service to seated customers.

3. The pavement from the building line to the kerb edge immediately outside the premises, including the gutter/channel at its junction with the kerb edge, shall be swept and or washed to remove all litter and other deposits occurring as part of the business at least one a day. Any Litter and sweepings collected must be disposed of as trade waste by the premises licence holder.
4. The premises licence holder shall arrange for all staff to undertake refresher training at least once every 6 months.

9.11 **Pool of Model Conditions**

9.12 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.

9.13 Officers have not identified any specific conditions from the pool of model conditions which are considered to be appropriate to mitigate the concerns raised by the Police.

9.14 Officers would identify the following condition as being appropriate to address the concerns of the resident who has objected:

- The premises licence holder shall ensure that all windows and doors shall be closed and remain closed while the premises is being used for the provision of licensable activities, except for the immediate access or egress of customers and or staff.

9.15 A draft premises licence which reflects this application and the conditions which are proposed in the preceding paragraphs is attached at Appendix 5.

9.16 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.

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 Members are reminded that officers determine whether or not representations are frivolous or vexatious, except for representations received from responsible authorities. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand scrutiny. As mentioned in paragraph 7.4, the Police representations mention individuals who are not the applicant for this

licence, and it will be for the Police to justify the relevance of their comments. Should Members consider that that the Police have established a relevant connection between the named individuals and the applicant, then it will be for Members to consider how much weight to attach to the representations.

- 10.3 Officers can advise that mediation was offered in this case, but at the time of writing this report no party had advised that they would like to take up this offer.
- 10.4 It is noted that the representations from the resident mention another premises further down Whippendell Road. Members are reminded of paragraph 14.19 of the statutory guidance which states:
- “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 Whippendell Road does not have a cumulative impact policy, so the cumulative impact of other premises in the vicinity should not be taken into consideration when determining this application. Premises licence applications are required to be considered on their own merits.
- 10.6 It is also noted that the resident’s representations mention concerns over people sitting outside the premises. This application is only requesting permission to sell alcohol for consumption on the premises, and the plan submitted with the application does not seek to licence any area outside of the premises. No alcohol is therefore able to be supplied to be consumed outside of the premises. Officers can advise that there is a little stretch of private land outside of this premises which may be used for tables and chairs without the need to obtain a licence from the council. If the premises did want to place tables and chairs on the public highway, a separate application would need to be made for a pavement licence to the licensing authority and would require to be processed under separate legislation and policy.
- 10.7 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.
- 10.8 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.

- 10.9 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.
- 10.10 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.
- 10.11 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.
- 10.12 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 – Application

Appendix 2 – Location plan

Appendix 3 – Police representations

Appendix 4 – Residents’ 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 (April 2021 – November 2023)

Watford Borough Council Pool of Model Conditions (January 2018)