

PART A

Report to: Licensing Sub Committee
Date of meeting: Wednesday, 2 February 2022
Report of: Senior Licensing Officer
Title: Application for a new Premises Licence- DKSR, 164 Whippendell Road, Watford WD18 7NB

1.0 Summary

- 1.1 An application has been made by Mr Srithas Sundralingham for a new premises licence for the premises at 164 Whippendell Road, Watford WD18 7NB. The premises trades as DKSR.
- 1.2 During the consultation period representations against this application were received from the Police and the council's Community Safety Manager.
- 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 before the	Treat	2

	not justified or legal	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 and is not currently licensed.

4.5 Under policy LP1, the premises is defined as an off-licence.

4.6 Under policy LP2, the premises is defined as falling within a residential area. The area is a mix of commercial and residential properties with residential properties both above and opposite the premises.

4.7 The premises does fall within the Whippendell Road Sensitive Licensing Area (policy LP4).

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

4.9 **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	✓

4.10 **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 – 22:00	08:00 – 22:00
Saturday	08:00 – 22:00	08:00 – 22:00
Sunday	08:00 – 22:00	08:00 – 22:00

4.11 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 Mr Srithas Sundralingham

5.4 **Closing date for representations**

5.5 7 January 2022

5.6 **Public notice published in newspaper**

5.7 17 December 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 recent history of visits or enforcement action against this premises, although it must be noted that the premises are not currently licensed and have not been licensed since March 2013.

5.10 The representations do mention previous enforcement action and applications. Officers can confirm the following facts since these are a matter of public record:

1 March 2010 – a licensing Sub Committee revoked the existing premises licence having considered a review brought by Hertfordshire Constabulary. This decision was appealed but the appeal was dismissed, upholding the original decision of the Sub-Committee.

21 March 2011 – a licensing Sub-Committee refused an application for a new premises licence for the premises. This decision was not appealed.

1 November 2011 – a licensing Sub-Committee refused an application for a new premises licence for the premises. This decision was not appealed.

6 November 2012 – a licensing Sub-Committee granted an application for a new premises licence for the premises. This decision was not appealed.

12 March 2013 – a licensing Sub-Committee was convened to consider a review of the premises licence brought by Hertfordshire Constabulary. The premises licence was surrendered prior to the review hearing, meaning that with no licence in force the hearing was abandoned. Since the licence was surrendered, there was no right of appeal.

24 November 2016 – a licensing Sub-Committee refused an application for a new premises licence for the premises. This decision was not appealed.

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 Representations were received from the Police acting as a responsible authority. These are attached at appendix 3.

7.3 No other responsible authority submitted representations against this application or agreed any steps with the applicant during the consultation process.

7.4 **Other Relevant Bodies**

7.5 Representations have been received from the persons listed below.

Name	Address	Representative Body (Yes/No)	Relevance to which licensing objective(s)
Liam Fitzgerald	Watford Borough Council, Town Hall	No	Prevention of crime and disorder

7.6 These representations are attached at appendix 4.

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 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 9.11 and 9.12
These paragraphs explain the general role of responsible authorities in considering licence applications. Although certain responsible authorities may be more of an expert in their relevant fields than others, licensing authorities must consider all relevant representations from responsible authorities carefully. It is the responsibility of all responsible authorities to ensure that their representations can withstand scrutiny to which they would be subject to at a hearing.
- 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 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 'will generally be allowed alcohol sales in accordance with the normal opening hours of the shop'

- Policy LP4 – Sensitive Licensing Areas
The premises are located on Whippendell Road within a Sensitive Licensing Area (SLA). SLAs were originally introduced to recognise community concerns about the impact that a concentration of licensable activities in a small geographical area has on the licensing objectives. This includes:
 - (1) availability of stronger-strength alcohol to street drinkers leading to anti-social behaviour in the immediate vicinity of the premises
 - (2) 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
 - (3) litter and other nuisances from a concentration of late-night take-aways

Where an application for alcohol sales or late night refreshment has been received within an SLA, this policy states that the licensing authority will consider making representations and will 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 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 LP7 – Public safety
Under this policy, the committee will consider any appropriate measures to mitigate risks to public safety where relevant representations have been received. This policy highlights particular measures that the committee may address through conditions, while also stating that conditions should not seek to duplicate existing health and safety requirements.
- 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 LP9 – Protection of children from harm
This policy details the approaches expected from applicants to promote this licensing objective, and what factors the subcommittee will take into account when considering concerns under this objective.
- 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 are 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 propose that the following conditions would be appropriate to attach to the licence to promote the licensing objectives, and are consistent with the applicant's operating schedule:

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 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 DVDs, 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. All faults/defects in the CCTV system must be reported to Hertfordshire Constabulary within one day of the fault being discovered. The notification must be made to the Hertfordshire Constabulary non-emergency telephone number of 101 and a log number obtained from the Police and recorded in the premises' incident book. The Watford Police Licensing Unit must also be notified as soon as reasonably practicable.
5. All faults with the CCTV system shall be repaired as soon as possible and in any case within two working days after which time, if the system is still inoperative no licensable activities shall take place without the agreement of Watford Police Licensing Unit and the licensing authority until the fault is rectified.
6. All sales of alcohol for consumption off the premises shall be in sealed containers only.
7. Outside of the hours authorised for the sale of alcohol, all alcohol within the trading area is to be secured behind locked grilles/screens or secured behind locked cabinet doors to the satisfaction of Watford Police Licensing Unit or the licensing authority.
8. No super-strength beer, lagers or ciders of 6.5% ABV (alcohol by volume) or above shall be sold at the premises.
9. No single cans or bottles of beer or cider shall be sold at the premises.
10. No sales of miniature spirits of any kind shall be permitted.
11. There shall be no self-service of spirits on the premises.
12. Prominent signage indicating the permitted hours for the sale of alcohol shall be displayed so as to be visible before entering the premises, where alcohol is on public display, and at the point of sale.

13. In addition to any other training, staff shall receive regular training in how to prevent underage sales and training in the premises' age verification policy. Training shall be documented to include the date the training was given, the name of the person who gave the training, the person who received the training and signatures by both trainer and trainee. All staff training records shall be available for inspection upon request by the Police and authorised officers of the licensing authority.
14. 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.
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 (PASS) approved identification before being allowed to purchase alcohol.
16. A sign advising customers that if they are unable to produce proof of age then there shall be no sale of alcohol shall be displayed at all points of sale.

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 would propose the following condition as being appropriate to the promotion of the licensing objectives due to the concerns raised in the representations which could replace or supplement the training conditions proposed above:

1. The licence holder shall ensure that all members of staff involved in the sale of alcohol receive training with regards to age restricted sales. This training must include the following:
 - The licensing objectives
 - Recognising signs of drunkenness
 - Challenge 25 and appropriate forms of identification
 - Refusals logs including when and how to use themThis training must be documented, signed by any person involved in the sale of alcohol on site to state that they understand the training, and kept

for a minimum of 6 months following the event. No person shall sell alcohol until they have received the training and signed the training document.

- 9.14 Officers would also propose the following condition lifted from the pool of model conditions:
2. The designated premises supervisor shall attend and pass a formal training course on avoiding underage sales and provide evidence of attendance if requested.
- 9.15 The representations from the Police raise concerns over their confidence in the management of the premises. Specific reference is made to previous allegations of selling alcohol to underage people and intoxicated customers. Officers suggest these conditions to increase the confidence of both the Police and staff in challenging customers over identification and to increase their level of understanding over the licensing objectives.. There are training bodies who offer courses which may meet these aims. It is prudent to name the aims of the training rather than a particular training course from a particular training body, and allows the applicant the ability to find a course which is suitable for them. If such a condition is held to be appropriate, Members are asked to consider whether this training should be completed within a certain time limit.
- 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.
- 9.17 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 This application falls within the Whippendell Road Sensitive Licensing Area under Policy LP4. 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 the application, or whether a refusal is justified on the basis that the licensing objectives will be undermined.
- 10.2 Members are able to depart from policy in circumstances where there are justifiable reasons for doing so, and after considering the individual merits of the application before them.
- 10.3 Members will see from the representations that reference is made to the history of the premises. Paragraph 5.10 provides detail of this history. Members must not re-examine the original decisions and whether it was right or wrong for the original

decisions to be made. This information is provided here as factual background information.

- 10.4 Members are reminded that they must consider this application on its own merits, based upon the submissions put before them. Prior enforcement action against any premises does not mean that there is an automatic presumption for refusal, and Members must consider the application without prejudice. Any person has the right to apply for a licence providing that they are over 18 and propose to use the premises for carrying on licensable activities. Where representations have been made, as in this case, applicants have the right to an open and fair hearing, where they can put forward an argument as to why their application should be granted. This same right of a fair and open hearing is also extended to those parties making representations against this application. The history of the premises is mentioned in the representations and is presented as evidence, and it will be for Members to attach such weight to this evidence as they see fit.
- 10.5 Officers have proposed conditions related to training staff on preventing underage sales and checking customer identification due to the representations received against this application. Members may wish to investigate what training, if any, the applicant may have undertaken prior to this hearing, or what other evidence the applicant may wish to present as proof of suitability. Any responses will need to be considered in line with the promotion of the licensing objectives, and Members may attach such weight as they see fit.
- 10.6 The representations refer to anti-social behaviour from street drinkers. Members are reminded of paragraph 2.21 of the Statutory Guidance, which states that beyond the immediate area surrounding a licensed premises, individuals are responsible for their actions. If a customer of any premises decides to engage in anti-social behaviour either while, or as a result of, consuming alcohol, but that alcohol was purchased legally, then it is the customer that is liable for their behaviour, and not the licensed premises. If Members are satisfied that there are additional steps that the premises could take in order to assist dispersal from the immediate area, and that such steps are appropriate for the promotion of the licensing objectives, then these steps may be confirmed by being attached to the licence as conditions.
- 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 – Watford Borough Council 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)