

## PART A

**Report to:** Licensing Sub Committee  
**Date of meeting:** Wednesday, 4 January 2023  
**Report of:** Licensing Officer (PS)  
**Title:** Application for a new premises licence - Grilled Cottage, 85 Vicarage Road Watford WD18 0EJ

### 1.0 Summary

1.1 An application has been made by Mr Wajatullah Ahmad for a new premises licence at 85 Vicarage Road Watford WD18 0EJ.

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

- 1) The prevention of crime and disorder
- 2) Public safety
- 3) The prevention of public nuisance
- 4) The protection of children from harm

1.3 During the consultation period representations against this application have been received from Environmental Health in their role as responsible authority and a resident near the premises. They have expressed concerns with regards to public nuisance.

### 2.0 Risks

Nature of Risk	Consequence	Suggested Control Measures	Response <i>(Treat, tolerate, terminate, transfer)</i>	Risk Rating (the combination of severity and likelihood)
Appeal against decision by applicant or objectors	Decision overturned by the courts with potential of costs being awarded against	Determination of application given with detailed reasons and after considering evidence	Treat	2

	council if decision is 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	Hearing process held 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  
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**Report approved by:** Justine Hoy, Associate Director, Housing And Wellbeing

#### 4.0 **Application**

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

Application for a new premises licence, attached at appendix 1.

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

The premises are described as a restaurant/takeaway. The premises are on the pedestrianised area of the Vicarage Road precinct local shopping parade, with residential accommodation above the premises and nearby

4.3 Under Policy LP1, the proposed use would be defined as a restaurant under our licensing policy with the provision of take-away.

4.4 The premises is located within a mixture of residential and commercial units. Under Policy LP2, the premises would be identified as in a residential area.

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

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

##### 4.7 **Licensable activities**

This application is requesting permission to provide the following licensable activities

<b>Licensable activity</b>	<b>Requested</b>
Plays	
Films	
Indoor sporting events	
Boxing or wrestling entertainment	
Live music	
Recorded music	
Performances of dance	
Entertainment of a similar description to live or recorded music, or dance	
Provision of late-night refreshment	✓
Sale of alcohol for consumption on the premises	
Sale of alcohol for consumption off the premises	

#### 4.8 **Licensable hours**

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

	Late night refreshment	*Opening Hours
Monday	23:00 – 01:00	11:00 – 23:00
Tuesday	23:00 – 01:00	11:00 – 23:00
Wednesday	23:00 – 01:00	11:00 – 23:00
Thursday	23:00 – 01:00	11:00 – 23:00
Friday	23:00 – 02:00	11:00 – 23:00
Saturday	23:00 – 02:00	11:00 – 23:00
Sunday	23:00 – 01:00	12:00 – 23:00

\*Officers are aware that the proposed hours for the late-night refreshment differ from the opening hours as there is a planning restriction to safeguard the amenities and quiet enjoyment of neighbouring properties. Pursuant to Planning policy SE22 there shall be no public/customers permitted within the premises and no cooking shall take place after 23:00 hours Monday – Sunday and bank holidays.

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

#### 5.0 **Background information**

##### 5.1 **Proposed Designated Premises Supervisor**

Not applicable as there shall be no sale of alcohol at the premises.

##### 5.2 **Current licences held**

None

##### 5.3 **Closing date for representations**

5 December 2022

##### 5.4 **Public notice published in newspaper**

18 November 2022

##### 5.5 **Visits and Enforcement action**

5.6 The committee have requested that we note the history of visits and enforcement actions which is as follows:

16.11.2020 – Noise investigation re: Commercial, Construction and demolition drilling, hammering and noise from extractor fan at the business

5.7 7.12.2022 - Commercial Noise complaint/investigation. Noise from extractor fan/current operation of the premises and public nuisance.

The premises has not been subject to any visits or enforcement action from the licensing authority in respect of its operation. However, it is acknowledged that the premises is not currently licensed.

## 6.0 **Promotion of the licensing objectives**

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

## 7.0 **Representations**

### 7.1 **Responsible Authorities**

7.2 A formal representation has been received from Environmental Health Section and is attached at appendix 4. The representation concerns noise associated with deliveries, the extract system and structural vibration. It proposed some conditions to amend the operating schedule. The representation has not been withdrawn at the time of writing this report.

7.3 Officers are aware that the Environmental Health representation has highlighted the current planning permission for the premises. Members are reminded that planning and licensing are separate regimes, administered under separate legislation and considered under different policies. The fact that controls exist on a planning permission does not mean that the premises are not able to apply for a licence for different hour or controls. Members are reminded that the planning authority were consulted on this application and have made no representations.

7.4 The Police and the applicant have agreed a few conditions to be attached to any licence if granted and as a result of this agreement, the Police did not make any representations. These conditions are covered later in the report.

### 7.5 **Other Relevant Bodies**

Representations have been received from the persons listed below.

	Address	Representative Body (Yes/No)	Relevance to which licensing objective (s)
Other Person	Vicarage Road	No	Public Nuisance

7.6 These Other Person representations are attached at Appendix 5.

7.7 The representations refer to the proximity of the premises to their flat detail the level of noise being generated at different times and the impact it has had on their lives.

## 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.
- The Licensing Act 2003 (Hearings) Regulations 2005 (as amended):  
These regulations detail how hearings should be conducted to determine applications submitted under the Licensing Act.

## 8.2 Statutory guidance

The following provisions of the Secretary of State's guidance (April 2018) apply to this application:

### Paragraphs 2.21

This paragraph explains that beyond the immediate area surrounding the premises, individuals are responsible for their own actions and are accountable. However, it may be reasonable for premises, following relevant representations, to display signage encouraging customers to be quiet until they leave the area and to respect the rights of people living nearby to a quiet night.

### Paragraphs 8.41 – 8.49

These paragraphs explain how applicants should, be clear in their operating schedules as to the measures they propose 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 particular licensing objectives that have given rise to the specific representations that have been received, and that in determining the application with a view to promoting the licensing objectives in the overall interests of the local community the Sub Committee must give appropriate weight to:

- the steps that are appropriate 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, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve." This requires an assessment of what steps would be suitable to achieve that end and requires the Sub Committee to consider the potential burden of a condition on the licence holder as well as the potential benefit in terms of the promotion of the licensing objectives. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

#### Paragraph 14.65

This paragraph explains that there may be circumstances when, as a condition of planning permission, a terminal hour may have been set for the use for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law.

#### Chapter 10

This chapter explains that the Sub Committee may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing that it is appropriate to impose conditions to promote one or more of the four licensing objectives. Any additional conditions requested by any party should be considered with reference to this chapter.

### **8.3 Statement of licensing policy**

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

#### Policy LP1 – Premises definitions

Under this policy, officers would define this premises as a restaurant with a takeaway service.

#### 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. The premises is situated on Vicarage Road precinct area within a mixture of commercial and residential premises; therefore, this will be a residential area and the policy states that restaurants/takeaways 'will generally be allowed late-night refreshment sales to midnight only'.

#### Policy LP 8 (Public Nuisance)

Under this policy the Committee will consider any necessary measures to

deal with the potential for public nuisance and/or anti-social behaviour where relevant representations have been received.

#### Policy LP11 (Representations Against Applications)

This policy recommends the type of information that should be included in a representation. It also explains how representations will be dealt with.

- 8.4 The Sub-Committee is reminded of 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.
- 8.5 The Sub-Committee is reminded that the Human Rights Act 1998 guarantees the right to a fair hearing for all parties in the determination of their civil rights. The Act also provides for the protection of property, which may include licences in existence, and the protection of private and family life.
- 9.0 **Conditions**
- 9.1 Members will be aware that an operating schedule forms part of the licensing process. This document outlines 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 consider 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 proposed by Environmental Health as a Responsible Authority**
1. All late-night refreshment provided under this licence shall be for consumption off the premises only.
  2. All orders for late night refreshment shall only be accepted if they are made remotely.
  3. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance. This includes noise from shutters or gates.



4. The Premises Licence holder shall ensure that the extract unit will be turned off at 23:00 hours and shall not be turned on again until the business reopens the following day.
5. The Premises Licence holder shall ensure that all windows and doors shall be closed at 23:00 hours and remain closed until the business reopens the following day, except for the immediate access or egress of staff.
6. The Premises Licence holder shall ensure that no refuse will be moved into the yard or external bins between 23:00 hours and when the business reopens the following day.
7. The Premises Licence holder shall ensure that all orders taken after 23:00 are online orders and shall be delivered to customers at a bona fide address.
8. The premises licence holder shall ensure that no external signage or advertisements shall be illuminated between the hours of 23:00 and when the business reopens the following day.
9. The premises licence holder shall ensure that the external shutters of the premises' shopfront are fully lowered over the windows of the customer area and the customer entrance when the premises is permitted to provide late night refreshment.
10. Signs shall be clearly displayed at the premises stating that the business is closed from 23:00hrs until the start of business again the next working day with the exception of remote delivery orders.
11. Delivery collections shall only happen via the rear entrance of the premises.
12. Signs shall be clearly displayed at the rear of the premises reminding delivery drivers that between the hours of 23:00hrs and 05:00hrs there shall be no idling of engines nor honking of horns from vehicles waiting for remote delivery orders.

9.5

**The following conditions have been agreed between the applicant and the Police and would be attached to any premises licence granted under this application.**

1. The premises shall install and maintain a CCTV system. All entry, exit and point of sale areas will be covered by the cameras, and the images shall enable frontal identification of every person entering in any light condition. The system shall continually record whilst the premises is open for licensable activities and during all times when staff and customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping.

Recordings shall be made available to a Police officer or an authorised officer of the licensing authority upon request throughout the preceding 31-day period, providing that such requests are in connection with the prevention or detection of crime.

2. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open to the public. This staff member shall be able to show a Police officer or an authorised officer of the licensing authority data or footage upon request.
3. The premises shall keep a suitable store of necessary recording media (such as DVD's, SD cards or similar) to enable footage to be recorded from the CCTV system and provided to an authorised officer of the licensing authority or Police officer upon demand.
4. 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.
5. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
6. No alcohol to be sold at this premises.
7. 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 the Police, which will record the following:
  - (a) all crimes reported to or by the premises to the Police
  - (b) any incidents of disorder
  - (c) any failures or faults in the CCTV system
8. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.
9. Customers shall not be permitted to enter the premises after 23:00hrs. Only deliveries shall be made after 23:00hrs till close.
10. Last orders for late night refreshment from customers inside the premises shall be at 22:45hrs on any day.
11. Records of staff training shall be maintained at the premises and made available to a Police Officer or an authorised officer of the Licensing Authority upon request.

- 9.6 **Conditions consistent with the operating schedule**  
Officers do not propose any additional conditions which are consistent with the applicant's operating schedule.
- 9.7 **Pool of Model Conditions**  
In addition to any conditions proposed by the responsible authorities or objectors, the licensing authority also has its own pool of model conditions that may help mitigate the concerns raised in the representations.
- 9.8 Officers have not identified any specific conditions from the pool of model conditions which are appropriate for the promotion of licensing objectives in this case.
- 9.9 This does not restrict the Sub-Committee's power to attach conditions from the pool (amended or otherwise) if they consider that they are appropriate, proportionate, justifiable and within the applicant's power to comply with.
- 9.10 A draft Premises Licence which reflects this application and the conditions which are proposed in the preceding paragraphs is attached at Appendix 6.
- 10.0 **Officers' observations**
- 10.1 As relevant representations in respect of this application have been received and 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 advised that hearing notices were sent to all parties and mediation offered.
- 10.3 Officers can advise that the applicant has been made aware of both the Environmental Health and the resident's concerns with regards to the current operation of the premises and the additional control measures that they are seeking to prevent noise from extractor fan, slamming shut of the door grill, the refuse bins, drilling, loud voices, sawing etc which it is alleged can continue for several hours. Members may wish to enquire whether the applicant wishes to offer any further conditions.
- 10.4 The resident's representations assert that the noise levels have nothing to do with walk-ins. It is the people who work at the premises that allegedly cause the noise. Members are reminded that they must consider this application on its own merits, based upon the submissions put before them. Members may wish to explore more on this matter as where representations have been received 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. Likewise, this same right of a fair and open hearing is also extended to parties making representations.

- 10.5 Officers have noted that this application has raised concerns with regards to noise emanating from the premises and also to the proposed operating hours into the night/early morning. Paragraph 2.19 of the Statutory Guidance states:  
“Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods.”
- 10.6 The EH representations have specific concerns around the deliveries and noise generated by the extractor system and have proposed some control measures. Paragraph 4.44 of the Statutory Guidance clearly states:  
“Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the licensing objectives.”
- 10.7 The resident’s representations assert that people hang around in the area and this application would contribute to unacceptable behaviour in the area. However, it is not stated if these disturbances could be linked to the use of the premises which is not currently licensed for late-night refreshment and there are no proposals for sale of alcohol. Some of these issues are already occurring and any measures may prove hard to enforce. Paragraph 2.20 of the statutory guidance states:  
“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. 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.”
- 10.8 It is noted that a condition has already been proposed and agreed to require the display of signage encouraging customers to respect the needs of local residents and leave the area quietly.
- 10.9 The Sub- Committee will need to consider the proposed hours of operation, the effectiveness of the operating schedule submitted by the applicant, the representations received, the right the applicant has to operate a business and balancing the rights of the residents to the quiet enjoyment and privacy of family life.

- 10.10 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 to them whatever weight they see fit.
- 10.11 The authority's determination should be evidence-based, justified as being appropriate for the promotion of licensing objectives and proportionate to what it is intended to achieve.
- 10.12 Members are also to attach whatever weight they see fit to both the submissions of the applicant, and the submissions of the objector, when considering this application.
- 10.13 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.
- 10.14 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 or
  - (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 them or
  - (c) reject the whole or part of the application.

## **Appendices**

Appendix 1 – Application

Appendix 2 – Location

Appendix 3 – Layout

Appendix 4 – EH Representations

Appendix 5 – Other Representations

Appendix 6 - Draft Premises Licence

## **Background Papers**

The following background papers were used in the preparation of this report. If you wish to inspect or take copies of the background papers, please contact the officer named on the front page of the report.

Licensing Act 2003

Amended guidance issued under section 182 of the Licensing Act 2003 (Home Office April 2018)

Licensing Act (Hearings) Regulations 2005

Watford Borough Council Licensing Policy (November 2018 – November 2023)

Watford Borough Council Pool of Model Conditions (January 2018)