

PART A

Report to: Licensing Sub Committee
Date of meeting: Thursday, 5 October 2023
Report of: Senior Licensing Officer
Title: Application for a new Premises Licence - Expo Cash & Carry, 35 Market Street, Watford

1.0 Summary

1.1 An application has been made by Expo Cash & Carry Ltd for a new premises licence for the premises at 35 Market Street, Watford WD18 0PN.

1.2 During the consultation period representations against this application were received from the Police and 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

2.1	Nature of Risk	Consequence	Suggested Control Measures	Response <i>(Treat, tolerate, terminate, transfer)</i>	Risk Rating (the combination of severity and likelihood)
	Appeal against decision by applicant or objector	Decision overturned by the courts with potential of costs being awarded against council if decision is not justified or legal	Determination of application given with detailed reasons and after considering evidence before the committee,	Treat	2

		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, Associate Director Housing and Wellbeing

4.0 Application

4.1 Type of application

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

4.3 **Description of premises**

4.4 The premises is situated on Market Street. The premises does currently benefit from an existing licence, but this licence is not held by the applicant for the new premises licence.

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. Properties within the area have commercial use on the ground floor and residential accommodation on the first floor and above.

4.7 The premises does fall within the Market Street sensitive licensing area (policy LP4).

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

4.9 **Licensable activities**

4.10 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	✓

4.11 **Licensable hours**

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

	Off-sales of Alcohol	Late night refreshment	Opening hours
Monday	06:00 - 01:00	23:00 - 01:00	06:00 - 01:00
Tuesday	06:00 - 01:00	23:00 - 01:00	06:00 - 01:00
Wednesday	06:00 - 01:00	23:00 - 01:00	06:00 - 01:00
Thursday	06:00 - 01:00	23:00 - 01:00	06:00 - 01:00
Friday	06:00 - 01:00	23:00 - 01:00	06:00 - 01:00
Saturday	06:00 - 01:00	23:00 - 01:00	06:00 - 01:00
Sunday	06:00 - 01:00	23:00 - 01:00	06:00 - 01:00

4.13 The application does not request any non-standard timings or seasonal variations to the proposed trading hours 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 Sellathurai Sivakaran

5.4 **Current licences held**

5.5 The applicant, Expo Cash & Carry Ltd, does not currently hold any licences for this premises.

5.6 There is an existing premises licence in place for this premises, held by another licence holder. It is stated in the application form that this application is for a new licence because it is the applicant's opinion that the current licence 'doesn't work'. For the purposes of determining this application, which is for different hours than the existing licence and in the name of a different licence holder, this application should be treated in isolation from the existing licence. Members are reminded that they are to consider the application before them today, which is an application for a new licence.

5.7 **Closing date for representations**

5.8 7 September 2023

5.9 **Public notice published in newspaper**

5.10 18 August 2023

5.11 **Visits and Enforcement action**

5.12 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 this is an application for a new licence and the applicant, Expo Cash & Carry Ltd, do not currently hold any premises licences for this premises or anywhere else within the Borough.

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)
Amanda Conlon	Market Street	No	Public nuisance

7.6 These representations are attached at appendix 4.

7.7 In accordance with our policy, officers can advise that representations were rejected from one party for not being valid. The representations were rejected for being received after the consultation period had finished.

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 (December 2022) 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. While the application is also requesting authorisation for the provision of late-night refreshment, the description on the application form is tailored more towards a traditional retail operation of a convenience store with an off-licence, rather than a designated late-night take-away.
- 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 in residential areas 'will generally be allowed alcohol sales in accordance with the normal opening hours of the shop'. The hours requested in this application for the sale of alcohol do not exceed the proposed opening hours of the premises.

- Policy LP4 – Sensitive Licensing Areas
The premises are located on Market Street 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 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.

- 8.7 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 proposed by responsible authorities**

9.6 In their representations, the Police have proposed the following conditions:

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. 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.

6. All sales of alcohol for consumption off the premises shall be in sealed containers only and shall not be consumed on the premises.
7. No super-strength beer, lager, or ciders of above 6.5% ABV (alcohol by volume) shall be sold at the premises.
8. No single cans or bottles of beer, lager or cider shall be sold at the premises.
9. No sales of miniature or quarter bottles 25cl or less of spirits of any kind shall be permitted.
10. Outside of the hours authorised for the sale of alcohol, all alcohol within the trading area is to be secured behind locked grills/screens or secured behind locked cabinet doors to the satisfaction of the Police Licensing Unit or the Licensing Authority.
11. There shall be no self-service of spirits on the premises.
12. A log (which may be electronically recorded) shall be kept detailing all refused sales of alcohol. The log should include the date and time of the refused sale and the name of the member of staff who refused the sale. The log shall be available for inspection at the premises by the police or an authorised officer of the licensing authority at all times whilst the premises are open.
13. An incident log shall be kept at the premises for at least 12 months, and made available on request to an authorised officer of the licensing authority or a police officer, which will record the following:
 - (a) all crimes reported to, or by the premises to the Police
 - (b) any complaints received
 - (c) any incidents of disorder
 - (d) seizures of fraudulent ID or other items
 - (e) any failures or faults in the CCTV system
14. 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.
15. The Premises Licence holder shall advertise their age verification policy and inform customers before the sale is completed online, that age and identity verification may be required at delivery in accordance with the Premises Licence holders age verification policy.

16. The Premises Licence holder or Designated Premises Supervisor shall ensure that online orders of alcohol are dispatched to bona fide addresses only.
 17. Delivery staff shall be trained in age verification process and training records to be maintained on site.
 18. No alcohol deliveries shall be made by post. All deliveries shall be made by courier company and a log shall be kept detailing all refused sales of alcohol including the date and time and made available for inspection at the premises by the police or an authorised officer of the licensing authority whilst the premises is open.
 19. A notice shall be prominently displayed on the premises requesting customers to respect the needs of local residents and leave the area quietly.
 20. The premises staff will request any customers congregating outside the premises to move away to consider residents.
 21. After 18:00 on any day, there shall be a minimum of 2 members of staff on duty.
- 9.7 The Police also propose new operating hours of 23:00-00:00 Monday to Sunday for late night refreshment, 08:00-00:00 Monday to Sunday for the sale of alcohol, and 07:00-00:00 for the opening hours.
- 9.8 Members should be advised that during the consultation period, discussions between the Police and the applicant were taking place but unfortunately no agreement was reached on some of the conditions, and as a result the Police have submitted representations, as mentioned in the Police's representations.
- 9.9 Officers witnessed the email exchanges between the applicant and the Police, and are aware that the following proposed conditions were subject to debate:
7. No super-strength beer, lager, or ciders of above 6.5% ABV (alcohol by volume) shall be sold at the premises.
 8. No single cans or bottles of beer, lager or cider shall be sold at the premises.
 9. No sales of miniature or quarter bottles 25cl or less of spirits of any kind shall be permitted.

9.10 Members may wish to first enquire, before moving on to any other items, as to whether there has been any movement with regards to these conditions. Any possible amendments or agreements could help focus discussion on these matters and lead to resolution.

9.11 **Conditions proposed by other objectors**

9.12 There were no conditions proposed by any other objectors.

9.13 **Conditions consistent with the operating schedule**

9.14 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. The premises shall install and maintain a CCTV system. All entry and exit points will be covered by the cameras, and the images shall enable frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of an authorised officer of a responsible authority (as defined by the Licensing Act 2003) throughout the entire 31 day period.
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 provide an authorised officer of a responsible authority copies of recent CCTV images or data within 24 hours when requested.
3. All sales of alcohol shall be in sealed containers only.
4. An incident log shall be kept and maintained at the premises, and made available on request to an authorised officer of a responsible authority. The incident log must be completed within 24 hours of an incident and shall be used to record the following:
 - (a) all crimes reported to the venue
 - (b) any incidents of disorder
 - (d) any failures or faults in the CCTV system
 - (g) any refusal of the sale of alcohol
 - (h) any visit by a responsible authority or emergency service.
5. 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

6. The premises licence holder will prominently display signage at the entrance to the premises and at all points of sale advising customers of the Challenge 25 proof of age scheme in operation at the premises.
7. The licence holder shall ensure that all members of staff involved in the sale of alcohol receive training with regards to the prevention of age restricted sales. This training shall be repeated every six months and must include training regarding the following:
 - (a) the licensing objectives
 - (b) the conditions of the premises licence
 - (c) prevention of underage sales of alcohol
 - (d) the premises' Challenge 25 policy and appropriate forms of identification
 - (e) prevention of proxy sales of alcohol
 - (f) prevention of sales of alcohol to persons who are drunk
8. The premises licence holder shall record all staff training in a register which shall be kept and maintained at the premises and made available for inspection by an authorised officer of a responsible authority on request.
9. There shall be no self-service of spirits on the premises.
10. The premises licence holder or designated premises supervisor shall ensure that orders for alcohol are dispatched to bona fide residential or business addresses only. Deliveries of alcohol shall not be made to public places.
11. Notices shall be prominently displayed at all exits requesting customers to respect the needs of local residents and leave the area quietly.

9.15 **Pool of Model Conditions**

9.16 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.

9.17 Officers have identified the following conditions from the pool of model conditions as being appropriate for the promotion of the licensing objectives and to mitigate the concerns raised in the representations:

1. Delivery vehicles shall switch off their engines whilst stationary and collecting orders for delivery. Delivery vehicle horns shall not be used at any time, except in accordance with the Highway Code.
2. No super-strength beer, lagers or ciders of 5.5% ABV (alcohol by volume) or above shall be sold at the premises.
3. No single cans or bottles of beer or cider shall be sold at the premises.
4. No sales of miniature or quarter bottles of spirits of any kind shall be permitted.

9.18 Although not covered in the pool of model conditions, it is noted that the representations from the resident mention concerns over noise from vehicles. The operating schedule indicates that the premises wishes to allow the remote sales of alcohol for delivery. The following condition may also be appropriate to mitigate concerns over vehicle noise from the use of the premises for collections:

1. The premises licence holder shall ensure that all orders of alcohol or late night refreshment for delivery shall be collected from the rear of the premises after 23:00 hours and shall not be collected or dispatched from the front entrance to the premises leading onto Market Street.

9.19 This condition is drawn up in accordance with policy LP8 (public nuisance) where delivery and collection areas and times can be considered.

9.20 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.

9.21 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 As relevant representations in respect of this application have been received, and which have not been withdrawn, the 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 no party had advised that they would like to take up this offer.

10.3 Officers have highlighted at paragraph 9.9 of this report where there was no agreement between the Police and the applicant with regards to conditions proposed by the Police. As stated in that paragraph, it may be useful for Members to

enquire as to the whether there has been any further developments with regards to these conditions. Although there was no agreement which has led to the submission of the Police representations, officers are aware that there is scope for agreement on some of the proposed conditions and proposed hours, with only the conditions identified as being sticking points where no agreement was made. If it is possible to compromise on these conditions it may be beneficial to start the hearing focussed on these matters.

- 10.4 The representations mention noise from other premises and customers using Market Street. Members are reminded that their deliberations should be focussed upon the individual merits of this application and the particular use of this premises, and not the cumulative impact of premises within the area. Market Street is covered by a special policy in the form of the sensitive licensing area policy (policy LP4), but not a cumulative impact policy.
- 10.5 Members are also reminded of paragraph 2.21 of the statutory guidance, which 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 antisocial behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.”
- 10.6 It is noted that steps were proposed in the applicant’s operating schedule to display signage encouraging customers to respect the needs to local residents and leave the area quietly.
- 10.7 The premises indicate that their operation will include remote sales of alcohol and alcohol deliveries. Where conditions have been proposed, it may be appropriate to specify where these apply to in-person purchases of alcohol and where they apply only to remote sales of alcohol. The option of allowing the premises to sale alcohol after the store has closed to personal visitors is also available to the Sub-Committee should they feel that reducing the physical opening times is appropriate for the promotion of the licensing objectives.
- 10.8 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.

- 10.9 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.
- 10.10 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.
- 10.11 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.
- 10.12 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.
- 10.13 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 – Resident's 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 (December 2022)

Licensing Act (Hearings) Regulations 2005

Watford Borough Council Licensing Policy (April 2021 – November 2023)

Watford Borough Council Pool of Model Conditions (January 2018)