

## PART A

**Report to:** Licensing Sub Committee  
**Date of meeting:** Monday, 27 November 2023  
**Report of:** Senior Licensing Officer  
**Title:** Application for a new Premises Licence - Tim Hortons, North Western Avenue, Watford WD25 9JS

### 1.0 Summary

1.1 An application has been made by TH UK & Ireland Ltd for a new premises licence for the premises at 6B North Western Avenue, Watford WD25 9JS.

1.2 During the consultation period representations against this application were received from a neighbouring business 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

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](mailto:austen.young@watford.gov.uk)

**Report approved by:** [Justine.hoy@watford.gov.uk](mailto:Justine.hoy@watford.gov.uk), Associate Director, Housing and Wellbeing

### 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 It should be noted that the application has been amended since it was originally submitted. These changes will be detailed later in the report.
- 4.4 **Description of premises**
- 4.5 The premises is situated just off North Western Avenue, near to the Dome Roundabout. The premises does not currently benefit from an existing licence.
- 4.6 Under Policy LP1 the premises is defined as a late night take-away.
- 4.7 Under Policy LP2 the premises is defined as falling within a residential area. Within the immediate vicinity of the application premises is a mix of commercial, healthcare services and residential properties.
- 4.8 A map of the location of the premises is attached at appendix 2A. This shows the location of the application premises.
- 4.9 A further plan is attached at appendix 2B, showing the location of the drive-through service window.
- 4.10 **Licensable activities**
- 4.11 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	

- 4.12 Although the original application did request the performance of recorded music, this element of the application was subsequently withdrawn. The current application is only seeking the provision of late night refreshment.
- 4.13 **Licensable hours**

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

	<b>Provision of late night refreshment</b>	<b>Opening hours</b>
Monday	23:00 - 05:00	06:00 - 00:00
Tuesday	23:00 - 05:00	06:00 - 00:00
Wednesday	23:00 - 05:00	06:00 - 00:00
Thursday	23:00 - 05:00	06:00 - 00:00
Friday	23:00 - 05:00	06:00 - 00:00
Saturday	23:00 - 05:00	06:00 - 00:00
Sunday	23:00 - 05:00	06:00 - 00:00

4.15 For clarity, the premises does operate as a drive-through and the drive-through collection window will remain open for service between the hours of 00:00 and 06:00. The opening hours only relate to when the premises would be physically open to customers and they would be allowed to be present on the premises. The drive-through window may be used outside of the opening hours when customers are not inside the building.

4.16 The application does not request permission for 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 **Current licences held**

5.3 The premises is not currently licensed.

#### 5.4 **Closing date for representations**

5.5 30 October 2023

#### 5.6 **Public notice published in newspaper**

5.7 6 October 2023

#### 5.8 **Visits and Enforcement action**

5.9 The committee have requested that we note the history of visits and enforcement actions. It is noted that the premises is not currently licensed.

5.10 In September 2023 it was reported to officers that the premises were advertising that they were trading beyond 11pm without holding a premises licence authorising the supply of late night refreshment. The outcome of this complaint was the submission of this premises licence application. No further complaints have been logged against the premises.

## 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, although officers would point out that during the consultation the application was amended.

## 7.0 **Representations**

### 7.1 **Responsible authorities**

7.2 Representations were received from the Police acting as a responsible authority but the application was amended and conditions were agreed between the applicant and the Police which resulted in the Police withdrawing their representations.

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

### 7.4 **Other relevant bodies**

7.5 Representations have been received from the persons listed below, and the relevant appendix number is listed against each objector.

Appendix	Name	Address	Representative Body (Yes/No)	Relevance to which licensing objective(s)
3	Garston Medical Centre	6A North Western Avenue	No	Crime and disorder, public nuisance
4	Laura Campbell-Hugh	St Albans Road	No	Public nuisance

7.6 In accordance with our policy, officers can advise that two representations were rejected during the consultation period. One representation was rejected because it related to the playing of recorded music, and while this did form part of the original application, recorded music had been withdrawn by the time that this representation had been received. The other representation was rejected because concerns were raised over the sale of alcohol, which was never part of this licence application. Both parties were advised why their comments were rejected and were

given the opportunity to submit any further comments or concerns before the consultation period closed.

7.7 Comments have been made in the representations which relate to the existing operation of the premises, particularly day-time use with regards to parking and the behaviour of staff. Although not relevant to licensable activities, these comments were passed to the applicant to raise with the premises and local regional manager in order to facilitate good neighbourly relationships.

## 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.
- 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 (August 2023) apply to, and are relevant to, this application:

- Paragraphs 2.24 & 2.25  
Paragraph 2.24 states that where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods.  
  
Paragraph 2.25 states that measures to control light pollution will require careful thought. This is because bright lighting outside of a premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for neighbours. It is acknowledged that applicants and licensing authorities will need to balance these issues.
- Paragraph 2.26  
This paragraph explains that beyond the immediate area surrounding a premises, individual who engage in anti-social behaviour are responsible for their own actions and should be held accountable accordingly. This

paragraph does state that it would be reasonable for a licensing authority to impose conditions regarding signage to be placed at exits or smoking areas to encourage patrons to be quiet and respect the rights of people living nearby to a peaceful night.

- 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.
- Paragraph 14.19  
This paragraph explains that the 'need' for a premises is not a matter for the licensing authority, and instead it is expected that the commercial demand for licensed premises should be a matter for the local planning authority and the for the market.

## 8.5 **Statement of licensing policy**

8.6 The following paragraphs of the licensing authority's statement of licensing policy (April 2021 - November 2023) apply to this application being the relevant policy for the application date:

- Policy LP1 – Premises definitions  
Under this policy, officers would define this premises as a late night take-away. The only licensable activity requested is the provision of late night refreshment, and following the amendments to the application the majority of hours requested for the provision of late night refreshment are for consumption away from the premises, with customers being served through the drive-through service window.
- 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. As described in paragraph 4.7 of this report officers would describe this premises as falling within a residential area. This policy states that take-aways in residential areas 'will generally be allowed late-night refreshment sales to midnight only (other than for special occasions)'. The hours requested in this application do extend beyond midnight and it is for the Sub-Committee to determine whether to apply this policy or not.
- 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. It should be noted that this policy states that measures to be taken by the applicant to prevent disturbance by customers arriving at or leaving the premises will be of greater importance between 10pm and 7am. This does cover the whole period of time during which late night refreshment may be provided.
- 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, including rejecting invalid representations and reporting on them to a Sub-Committee.

8.7 Officer also wish to clarify that within the Borough of Watford there are no designated locations where premises offering late night refreshment are exempt from the requirement to hold a premises licence. A premises licence is therefore required for this business to authorise the provision of late night refreshment.



8.8 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.

8.9 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 The following conditions were agreed between the applicant and the Police during the consultation period and were accepted as amendments to the application and the 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 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. 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.
4. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
5. 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) all ejections of patrons
  - (c) any complaints received relating to crime and disorder
  - (d) any incidents of disorder
  - (e) seizures of drugs or offensive weapons
  - (f) any failures or faults in the CCTV system
6. 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.

9.7 During correspondence with the Police, it was also confirmed that the operating hours of the application should be amended to allow the provision of late night refreshment between the hours of 23:00 and 05:00 Monday to Sunday, the premises would only open to the public during the hours of 06:00 and 00:00 Monday to Sunday with the drive-through service window remaining active 24 hours a day. Between 00:00 and 06:00, customers may only be served through the service window and not be allowed entrance to the premises.

9.8 As a result of licensing officers seeking clarification on the provision of recorded music, it was confirmed that the premises did not intend to offer music which would be classified as regulated entertainment, and as a result recorded music was withdrawn from the application.

- 9.9 No other conditions or additional steps were agreed with any other responsible authority.
- 9.10 **Conditions proposed by other objectors**
- 9.11 There were no conditions proposed by any other objectors.
- 9.12 **Conditions consistent with the operating schedule**
- 9.13 Officers would propose the following condition as being consistent with the applicant's operating schedule, following correspondence with licensing officers, and being appropriate for the promotion of the licensing objectives:
7. Customers collecting food and/or drink orders between the hours of 00:00 and 05:00 shall only be served through the drive-through service window at the premises.
- 9.14 This condition confirms that late night refreshment provided between 00:00 and 05:00 shall only be provide through the drive-through service window. It states the requirement for service through the drive-through service window clearer than just relying upon the opening hours. Conditions should be clear on what is required of licence holders, and officers would suggest that this does promote clarity. Although the service window is to be in use until 06:00, the condition can only apply until 05:00 because late night refreshment only applies until 05:00.
- 9.15 Officers would propose that if customers are restricted to collecting food and drinks in their vehicles, there is less risk of customers needing to exit their vehicles and instead drive away from the premises after collecting their order which would mitigate concerns of nuisance in the immediate vicinity.
- 9.16 **Pool of Model Conditions**
- 9.17 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.
- 9.18 Although not included in the pool of model conditions, the following condition may be appropriate to mitigate concerns regarding the risk of litter:
1. Signage shall be clearly displayed at the drive-through service window, visible to customers using the service window, advising customers not to litter and use the bins provided for the disposal of rubbish.
- 9.19 There are two litter bins currently provided on the outside of the premises, with one outside the front of the premises and one located on the way out of the drive-

through. Concerns over litter have been raised in the representations and directing customers to use these litter bins could help mitigate these concerns. The statutory guidance does state that away from the immediate area surrounding the premises customers are responsible for their own actions. However, it is also established in the statutory guidance that signage may be used to help influence customer behaviour. The bins are located close to the premises and officers would advise that they are located sufficiently close to be considered the immediate surrounding area.

9.20 If the Sub-Committee consider it appropriate to establish litter collection through a condition, as is indicated through the representations, officers have identified the following condition from the pool of model conditions, modified to take into account the specific location of the premises and the representations which have been received, as being appropriate for the for the promotion of the licensing objectives and to mitigate the concerns raised in the representations:

2. All litter to include discarded flyers, cigarettes, fast food packaging and any other litter, whether caused by the venue or not, shall be cleaned from an area of 20 metres in all directions from the drive-through service window at least once a day. All waste collected is to be disposed of by the premises of as trade waste. The details of all cleaning undertaken under this condition are to be recorded and maintained at the premises for 12 months.

9.21 It would not be proportional to require the entire car park at this location to be cleaned daily and therefore it is appropriate to set a limit on the area which is to be cleaned. Officers would propose a limit of 20 metres to help limit the spread of litter while still remaining within the vicinity of the premises. Since the drive-through service window will see the majority of customers during the licensed period, and not the front entrance of the premises, it is considered appropriate to measure from this point. The model condition only proposes that the area within 15 metres of a premises be cleared. While this remains an option to Members, an area of 15 metres would not cover the exit from the drive-through and would fall short. Extending this to 20 metres would cover the drive-through exit and would be specifically tailored to the specific layout and operation of this premises. However, this would not cover the car parking spaces mentioned in the representations, which are approximately 22 to 41 metres away from the collection window.

9.22 With the licence only requesting the provision of late night refreshment, this condition would only be enforceable between the hours of 23:00 and 05:00.

9.23 All measurements have been obtained using the council's mapping software.

9.24 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. It also does not restrict

the Sub-Committees power to amend any proposed conditions if an amended condition would be more appropriate to address the concerns raised against this application.

9.25 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 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 has been offered in this case as is standard practice, and any updates with regards to this mediation shall be provided to Members as appropriate.

10.3 It is noted that the representations do mention that there is no need for a 24 hour premises in this location. Members are reminded that the statutory guidance does go into detail on the difference between the need for premises and the cumulative impact of a number of premises within a set area. This premises does not fall under a cumulative impact policy and therefore the cumulative impact of nearby premises is not up for consideration. With regards to the 'need' for premises, this is not a matter for the licensing authority to determine. Members are only required to consider the application before them on its own merits and determine the application.

10.4 The representations do concern the impact of customers, particularly with regards to litter. As highlighted earlier in this report, the statutory guidance does state that beyond the immediate area surrounding the premises, individuals are accountable for their own actions. In proposing relevant conditions for this application, officers have proposed conditions, particularly with regards to signage and possible litter collection, within the vicinity of the premises. In doing so, officers have proposed a limit on how far away from the premises this collection should occur. Conditions should clearly set out what is expected from licence holders and their staff and this aim can be achieved by defining the litter collection area. The proposed extent has also been put forward taking into account the layout and use of the surrounding area.

10.5 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.

- 10.6 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.
- 10.7 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.
- 10.8 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.
- 10.9 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.
- 10.10 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 2A – Location plan

Appendix 2B – Site plan

Appendix 3 – Garston Medical Centre representations

Appendix 4 – Campbell-Pugh 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 (August 2023)

Licensing Act (Hearings) Regulations 2005

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

Watford Borough Council Pool of Model Conditions (January 2018)