

Application for a Premises Licence: Simply Fresh

Committee	Licensing Sub-Committee
Officer Contact	Steven Dormer Licensing Officer 01895 277409
Papers with report	Appendix 1 - Application for a premises licence Appendix 2 - Recommendation Application amendment Appendix 3 - Resident representations Appendix 4 - Map & Photos
Ward name	Botwell

1.0 SUMMARY

To determine an application for a premises licence in respect of Simply Fresh Travel Ltd, 14 The Square, Alvechurch, B48 7LA. (**Appendix 1**)

2.0 RECOMMENDATION

That the Licensing Sub Committee grant the amended application with the appropriate conditions consistent with this type of application. (Appendix 2).

3.0 APPLICATION

The initial application was for the sale of alcohol seven days a week 06:00 to 00:00 and Late Night Refreshment between 23:00 to 00:00 for Simply Fresh, Boiler House, Old Vinyl Factory, Blyth Road, Hayes, UB3 1HA.

Significant amendments were made to the application on the 1st August 2019. (**Appendix 2**).

3.1 Type of application applied for

New premises licence application under the Licensing Act 2003.

3.2 Description of the premises

New retail unit situated on a mixed use development in Hayes Town. The store will sell a range of grocery items and alcohol products. The store will be equipped with express and self service tills.

3.3 Proposed sale of alcohol and opening hours

	Proposed Sale of Alcohol	Opening hours of the premises
Monday	07:00 - 23:00	07:00 - 23:00
Tuesday	07:00 - 23:00	07:00 - 23:00
Wednesday	07:00 - 23:00	07:00 - 23:00
Thursday	07:00 - 23:00	07:00 - 23:00

Friday	07:00 - 23:00	07:00 - 23:00
Saturday	07:00 - 23:00	07:00 - 23:00
Sunday	07:00 - 23:00	07:00 - 23:00

3.5 Other relevant licensed premises nearby

Premises	Activities Authorised	Times Authorised
Cafe 640 East Cafe, Blyth Road, Hayes, UB3 1HA	Supply of alcohol (On and off sales.)	From Monday to Saturday 11:00 -23:00 From Sunday 11:00 - 22:00

4.0 **CONSULTATION**

4.1 Closing date for representations

15th August 2019.

4.2 Public Notice published in local newspaper

31st July 2019.

5.0 **REPRESENTATIONS**

5.1 We have received three representations from residents.

Name and Address	Grounds for Representation	Appendix
Redacted	Prevention of Crime and Disorder, Prevention of a Public Nuisance	Appendix 3
Henry Douglas, The Boiler House, Hayes, UB3 1DZ	Prevention of Crime and Disorder, Prevention of a Public Nuisance	Appendix 3
Malcom & Eva Chapman The Boiler House, 2 Material Walk , Hayes, UB3 1DZ	Prevention of Crime and Disorder, Prevention of a Public Nuisance	Appendix 3

6.0 BACKGROUND INFORMATION

6.1 Proposed Designated Premises Supervisor

Christopher John Mitchener.

6.2 Proposed Licence Holder

Simply Fresh Travel Ltd.

6.3 Map and Photos

Appendix 4

7.0 OFFICER'S OBSERVATIONS

7.1 This is an application for a new premises licence. The applicant is wishing to sell alcohol products alongside daily groceries. The licence holder has proposed a number of conditions to reduce the impact on local residents. CCTV and accredited proof of age policy and staff training are significant measures that will be in place to address the licensing objectives.

As this is a new off licence no evidence exists regarding any current issues that may occur in the proximity of Simply Fresh.

Officer Visit 16th August 2019

Visit to the site carried out. At the time of the visit the premises were not open. The area in which the premises will operate was largely residential apartments. Cafe 640 is the nearest licensed premises to Simply Fresh. However it would appear that no alcohol at the time was being offered for sale at the time of my visit at Cafe 640.

7.2 The representations received mainly raise the following issues:

The prevention of crime and disorder- Representations from interested parties raise concerns of an increase in anti social behaviour if the application for a licence is granted. The evidence of drug use and the existence of brothels in the area is something not to be attributed to the applicant.

The prevention of public nuisance - Interested Parties have concerns that this application if granted could have a direct impact in relation to noise and disturbances from Simply Fresh. Residents are concerned about the increase in street drinkers. Residents have concerns that the noise from street drinkers would occur into the late hours. An increase in litter is also a concern raised by the residents.

8.0 Relevant sections of S.182 Guidance

Determining actions that are appropriate for the promotion of the licensing objectives

At paragraph 9.42 it states that "Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be".

At paragraph 9.43 it states that "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".

At paragraph 9.44 it states that "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 promotion of the licensing objectives. However, it is 76 | Revised Guidance issued under section 182 of the Licensing Act 2003 imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. 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".

Imposed Conditions

At paragraph 10.8 The licensing authority 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 (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing objective, conditions may be included that are aimed at preventing illegal working in licensed premises. This provision also applies to minor variations.

The need for licensed premises

At paragraph 14.19 it states "There can be confusion about the difference between the "need" for premises and the "cumulative impact" of premises on the licensing objectives, for example, on crime and disorder. "Need" concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of Revised Guidance issued under section 182 of the Licensing Act 2003 | 109 licensing policy".

9.0 Relevant sections of the Licensing Policy

Licensing Objectives - The Prevention of Crime and Disorder

At paragraph 7.4 When addressing crime and disorder, the applicant should identify any particular issues that are likely to affect adversely the promotion of the crime and disorder objective. They should then include in the operating schedule how they will deal with those matters.

At paragraph 7.6 Applications referred to the Licensing Sub-Committee where relevant objections have been received will be determined on the individual merit of each case. The Licensing Sub-Committee has the power to impose specific conditions when considered necessary in respect of the Crime and Disorder objective.

Licensing Objectives - The Prevention of Public Nuisance

At paragraph 9.6 If relevant representations are received from a Responsible Authority, Elected Members or interested parties, the application will be determined by a Licensing Sub-Committee.

At paragraph 9.7 Applications referred to the Licensing Sub-Committee will be determined on the individual merit of each case. The Licensing Sub-Committee has the power to impose specific conditions when considered necessary in respect of the Prevention of Public Nuisance objective.

Licensing Objectives - The Protection of Children from Harm

At paragraph 10.5 It is recognised that the Mandatory Conditions attached to premises licences where alcohol is sold/supplied must have in place an age verification scheme. The Licensing Authority would normally expect this scheme to include a challenge for photo identification to all persons who appear to be under the age of 25 years i.e. 'Challenge 25'.

At paragraph 10.11 The Licensing Authority will expect that each operator dealing in the sale and supply of alcohol implements a proof of age policy in line with the Mandatory Licence conditions. The Authority expects premises licence holders to ensure that their staff are adequately trained and in every case where there is any doubt as to whether the customer is aged eighteen or over: 'No ID- No sale'.

10.0 LEGAL CONSIDERATIONS

When considering an application for a grant of a new Premises Licence, the Sub-Committee shall carry out its functions with a view to taking steps it considers appropriate for promoting the licensing objectives. The licensing objectives are:

- Prevention of crime and disorder
- Public Safety
- Prevention of public nuisance
- Protection of children from harm

Members should note that each objective is of equal importance.

The Sub-Committee must ensure that all licensing decisions:

- Have a direct relationship to the promotion of one or more of the four licensing objectives
- Have regard to the Council's statement of licensing policy
- Have regard to the Secretary of State guidance
- Must not be subject to a blanket policy to the extent that it is applied so rigidly that an exercise of discretion in each individual case is precluded.

An application for a new premises licence may be made pursuant to s.16 and s.17 of the Act, and with regard to the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005/42 and the Licensing Act 2003 (Fees) Regulations 2005/79.

Where no relevant representations are made, the Licensing Authority must grant the licence in accordance with the application. The only conditions which can be imposed are those which are consistent with the operating schedule and any mandatory conditions.

Where relevant representations are made, the Licensing Authority must hold a hearing to determine the application, unless all are agreed that such a hearing is unnecessary s.18(3)(a) Licensing Act 2003.

Relevant representations are those that relate to the effect of the granting of the application on the promotion of the licensing objectives made by an interested party or responsible authority that have not been withdrawn and are not, in the opinion of the relevant licensing authority, frivolous or vexatious s.18(7) Licensing Act 2003.

The Sub-Committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. This will be decided on a case to case basis.

Following a hearing, the Sub-Committee must consider all relevant representations, and having taken into account the promotion of the licensing objectives, under s.18(3)(b) and (4) Licensing Act 2003, a decision can be taken:-

- i. To grant the license, subject to the mandatory conditions and conditions consistent with the operating schedule;
- ii. To impose additional relevant conditions to such an extent as is considered necessary for the promotion of the licensing objectives;
- iii. To exclude any of the licensable activities to which the application relates;
- iv. To amend the times for all or some of the licensable activities;
- v. To refuse to specify a person in the license as the premises supervisor;
- vi. To reject the application.

Conditions will not be necessary if they duplicate a current statutory requirement. The Licensing Authority may therefore only impose such conditions that are necessary to promote the licensing objectives arising out of the consideration of the representations.

If the Sub-Committee determines that it is necessary to modify the conditions, or to refuse the application for a Premises License application, it must give reasons for its decision.

The Council in its capacity as Licensing Authority has a duty to have regard to its public sector equality duty under section 149 of the Equality Act 2010. In summary section 149 provides that a Public Authority must, in the exercise of its functions, have due regard to the need to-

- i. eliminate discrimination harassment, victimisation and any other conduct that is prohibited by or under this Act;
- ii. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- iii. foster good relations between persons who share a relevant protected characteristics and persons who do not share it.

Section 149 (7) of the Equality Act 2010 defines the relevant protected characteristics as age, disability, gender reassignment,

Interested Parties, Responsible Authorities and the Applicant have the right to appeal the decision of the Sub-Committee to the Magistrates' Court within a period of 21days beginning with the day on which the applicant was notified by the licensing authority of the decision to be appealed against.