

Application for the grant of a Premises Licence: The Village Cafe

Committee	Licensing Sub-Committee
Officer Contact	Jhini Mukherjee Ex 01895 277433
Papers with report	Appendix 1 - Application for the grant of a premises licence including proposed plan Appendix 2 - Officer's Recommendation Appendix 3 - Mediation between Licensing Authority and the Applicant Appendix 4 - E-mail from Metropolitan Police confirming that they do not have any objection to this Application Appendix 5 - Representations from Interested Parties Appendix 6 - Photographs Appendix 7 - Map of the area Appendix 8 - Previous premises licence for The Village Cafe surrendered in November 2018
Ward name	Botwell

1.0 SUMMARY

To consider an application for a Premises Licence in respect of Village Cafe, High Point Village, Hayes, UB3 4FL and representations against the application received from five interested parties. A copy of the Application Form and the plan is appended as **Appendix 1**.

2.0 RECOMMENDATION

2.1 To grant the licence consistent with the operating schedule conditions in addition to the proposed conditions in **Appendix 2**.

3.0 APPLICATION

The new Premises Licence Application has been made by Ms Jana Tamoeva for the premises The Village Cafe.

3.1 Type of application applied for
New Premises Licence

3.2 Description of premises

The premise as a whole is a self contained lock up shop unit on the ground floor level in the High Point Village development in Hayes. No areas have been specifically identified as the proposed licensed area on the plan as submitted but the premises is clearly identified in the plan.

There is a description of the premises available in **Appendix 2** (Officer's recommendation) and photographs in **Appendix 6**

3.3 Licensable Activities

<u>Activity</u>		<u>Proposed for new premises licence</u>
Sale of Alcohol:	Consumption on the premises	x
	Consumption off the premises	x

3.4 Licensable Activity Hours

	Proposed hours for sale by retail of alcohol
Monday	11.00-23:00
Tuesday	11.00-23:00
Wednesday	11.00-23:00
Thursday	11.00-23:00
Friday	11.00-23:00
Saturday	11.00-23:00
Sunday	11.00-23:00

3.5 Opening Hours

	Proposed hours for premises licence
Monday	07.00-23:00
Tuesday	07:00-23:00
Wednesday	07:00-23:00
Thursday	07:00-23:00
Friday	07.00-23:00
Saturday	07.00-23:00
Sunday	07.00-23:00

3.6 Operating Schedule and Conditions

The operating schedule, as proposed by the Applicant, can be found in the Application Form in **Appendix 1**.

Section 18 of the operating schedule demonstrates the steps the Applicant proposes to take in order to promote the licensing objectives. These steps have received comment in **Appendix 2** (Officer's recommendations) and **Appendix 3** (Mediation between the Licensing Authority and the Applicant).

A full list of licence conditions which are consistent with the operating schedule as set out in section 18 are contained in **Appendix 2** (Officer's recommendation).

4.0 **CONSULTATION**

4.1 Closing date for representations
13 August 2020

4.2 Public Notice published in local newspaper
27 July 2020 - Hayes Town News

5.0 **REPRESENTATIONS**

5.1 **RESPONSIBLE AUTHORITIES**

One Representation was received from Licensing Authority acting as Responsible Authority under the Act which was later withdrawn after satisfactory negotiation with the Applicant and this is appended as **Appendix 3**.

Under S.182 Guidance, in paragraph 2.1, it says that "Licensing Authorities should look to the police as the main source of advice on crime and disorder". We have not received any representation from the Metropolitan Police in this regard. We have instead received an e-mail confirming that the Metropolitan Police do not object to this application. This is appended as **Appendix 4**.

5.2 There are 5 representations from other parties

Interested Parties	Ground for Representation	Appendix
Objector 1	Public Nuisance	Appendix 5
Objector 2	Public Nuisance, Crime and Disorder, Public Safety, Protection of children from harm	Appendix 5
Objector 3	Public Nuisance, Crime and Disorder, Public Safety, Protection of children from harm	Appendix 5
Objector 4	Public Nuisance and Crime and Disorder	Appendix 5
Objector 5	Public Nuisance and Crime and Disorder	Appendix 5

6.0 BACKGROUND INFORMATION

6.1 Designated Premises Supervisor

The proposed Designated Premises Supervisor is Jana Tamoeva who holds a Personal licence with Hertsmere Borough Council under number, PER 1296.

6.2 Other licensed premises nearby

There are four off licensed local stores within 100 meters which are currently licensed to 23.00 weekdays and Saturdays. There are two public houses licensed with terminal hours from midnight weekdays to 01:00 or 02:00 at weekends. There is a hotel in the High Point Village complex with a licensed bar until 00:30 and two restaurants, namely Loaded Burger and TakaaTak with terminal hours ranging from 23.00 hours on weekdays to 01.00 hours at weekends. The premises licences for the last two premises were issued as recently as April 2019 and April 2020.

Photos of the premises are attached as **Appendices 6 and 7**.

7.0 OFFICER'S OBSERVATIONS

- 7.1 This is an application to licence a lock up shop unit, which proposes to operate as a licensed cafe in an area of considerable private dwellings. The area subject to the application is on the ground floor level overlooked by apartments and within a public square.
- 7.2 As mentioned in Paragraph 5.1, the police are the main source of advice on crime and disorder. This Application has not attracted any objection from the Metropolitan Police on the grounds of crime and disorder. We have instead received an e-mail confirming that the Metropolitan Police do not object to this application.
- 7.3 The cafe benefitted from a premises licence up until November 2018 and a copy of that is appended as **Appendix 8**, for reference. This licence was later surrendered. The premises will close at 23.00 hours every day and so any live music which has been proposed by the Applicant ceases to be classed as regulated entertainment under the Live Music Act 2012 and Licensing Act 2003.
- 7.4 The premises will operate as a food-led establishment and not exclusively or primarily for the retail sale of alcohol. The operating schedule conditions and the additional conditions as agreed by the Applicant with the Licensing Authority reflect that intention.
- 7.5 Any extension of hours originally mentioned on the form by way of non-standard timings and seasonal variations have since been removed. The trading hours of the premises are the same as mentioned in the lease agreement.
- 7.6 **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 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".*

Proportionality

At paragraph 10.10 it states that *"The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises. Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives".*

Hours of trading

At paragraph 10.13 it states *"The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions about the hours during which premises can conduct licensable activities as part of the implementation of its licensing policy statement. Licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in*

consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application"

At paragraph 10.15 it states *"Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours".*

Licensing hours

At paragraph 14.51 it states *"With regard to licensing hours, the Government acknowledges that different licensing approaches may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make such decisions based on their local knowledge and in consultation with other responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application".*

At paragraph 14.52 it states *"Statements of licensing policy should set out the licensing authority's approach regarding licensed opening hours and the strategy it considers appropriate for the promotion of the licensing objectives in its area. The statement of licensing policy should emphasise the consideration which will be given to the individual merits of an application. The Government recognises that licensed premises make an important contribution to our local communities, and has given councils a range of tools to effectively manage the different pressures that licensed premises can bring. In determining appropriate strategies around licensed opening hours, licensing authorities cannot seek to restrict the activities of licensed premises where it is not appropriate for the promotion of the licensing objectives to do so".*

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."*

7.7 Relevant sections of the Licensing Policy

Licensing Hours

At Paragraph 21.1 it states that *"Prior to the introduction of the Licensing Act 2003, it was believed that fixed and artificially early closing times (established under the Licensing Act 1964) were one of the key causes of rapid binge drinking prior to closing times and one of the causes of disorder and disturbance when large number of customers were required to leave the premises simultaneously".*

At Paragraph 21.2 it states that *"The aim through promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through flexible opening times".*

At Paragraph 21.3 it states that *"Arbitrary restrictions that would undermine the principle of flexibility will therefore be avoided. The four licensing objectives will be paramount at all times and the Council will always consider the individual merits of each case"*.

At Paragraph 21.4 it states that *"In accordance with guidance there is no fixed restriction on terminal hours for any particular areas of the borough. Such a restriction could cause the migration of patrons from one area to another and create the circumstances that the legislation is attempting to avoid. Each application will be dealt with on its merits. It is for the Applicants to detail in their Operating Schedule exactly what times they intend to open and close the premises and what measures they will take to ensure that they do not cause nuisance or disturbance to their neighbours in the vicinity. The later the terminal hour applied for, the greater will be the need to address the issues of disturbance and nuisance"*.

At Paragraph 21.5 it states that *"Shops, stores and supermarkets licensed to sell alcohol will normally be allowed to do so for the full duration of their trading hours. Restrictions may be applied, for example where representations are made indicating the particular premises or patrons of the premises are linked to disorder and or disturbance"*.

Licence Conditions

At Paragraph 17.1 it states that *" Conditions on premises licences and club certificates are determined by:*

- a) *The measures put forward on the Operating Schedule*
- b) *Mandatory conditions within the Act*
- c) *Measures decided at a hearing by the Licensing Sub Committee"*

At Paragraph 17.2 it states that *"Any conditions attached to licences following relevant representations will focus on matters within the control of the Premises Licence Holder or Club Management Committees. They will address matters which have a direct impact on those living, working or engaged in normal activities in the vicinity, as well as patrons of the licensed premises. They will not be used as a means of attempting to attach responsibility to Premises Licence Holders or Club Management Committees for matters outside their reasonable control, such as anti-social behaviour once away from the premises or licensable activity"*.

At Paragraph 17.3 it states that *"The Licensing Authority will not impose standard conditions upon every licence issued, however it may have regard to model conditions produced by the Government and/or the Institute of Licensing and it may choose to impose these in appropriate circumstances"*.

8.0 LEGAL CONSIDERATIONS

1. 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

2. Members should note that each objective is of equal importance. There are no other licensing objectives, and the four objectives are paramount considerations at all times.
3. 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.
4. 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.
5. The Sub-Committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case by case basis.
6. 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 licence, 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 licence as the Premises Supervisor
 - vi. To reject the application
7. 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.
8. If the Sub-Committee determines that it is necessary to modify the conditions, or to refuse the application for a Premises Licence application, it must give reasons for its decision.
9. 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.

10. Section 149 (7) of the Equality Act 2010 defines the relevant protected characteristics as age, disability, gender reassignment, race, religion or belief, sex sexual orientation, marriage and civil partnership and pregnancy and maternity.
11. 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 21 days beginning with the day on which the Applicant was notified by the licensing authority of the decision to be appealed against.