

Application for the grant of a Premises Licence: Welcome Store

Committee	Licensing Sub-Committee
Officer Contact	Mark McDermott, Licensing Officer
Papers with report	Appendix 1 - Application for the grant of a new Premises Licence Appendix 2 - Representation from local resident Appendix 3 - Representation from local resident Appendix 4 - Email from Metropolitan Police Appendix 5 - Map of the area/photo Appendix 6 - Proposed Conditions
Ward name	Botwell

1.0 SUMMARY

To consider an application for a new Premises Licence as seen in **Appendix 1** in respect of Welcome, Unit 1, Boiler House, Blyth Road, Hayes, UB3 1BY which has attracted representations from two interested parties. The two representations seek reduced operation schedule hours and conditions relating to the prevention of Crime and Disorder and Public Nuisance objectives.

2.0 RECOMMENDATION

To grant the licence consistent with the operating schedule conditions, and incorporate the suggested conditions stated in Appendix 6.

3.0 APPLICATION

The new Premises Licence application has been made by Jay Retail Limited for an off-licence convenience store, situated at Unit 1, Boiler House, Blyth Road, Hayes, UB3 1BY. The application submitted is for a licence to sell alcohol, Monday to Sunday, from 07.00 hours to 23.00 hours. This has been amended with a reduction to the terminal hour for the sale of alcohol on Sunday to 22.00.

3.1 Type of application applied for

New Premises Licence application under Licensing Act, 2003.

3.2 Description of the premises

The proposed premises are a new retail Co-op Welcome shop selling a range of groceries as well as alcohol in a purpose-built retail unit on the ground floor of a residential building that is part of a new development of the Old Vinyl Factory.

3.3 Licensable Activities

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

3.4 Opening Hours and proposed hours for licensable activity

	Opening hours of the premises	Proposed hours for sale by retail of alcohol
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 - 22:00

3.5 Other licensed premises in the immediate vicinity

Premises	Activities Authorised	Times Authorised
640 East Cafe, Blyth Road, Hayes, UB3 1HA	Sale of Alcohol On and Off	From Monday to Saturday 11:00 -23:00 From Sunday 11:00 - 22:00
Simply Fresh Boiler House Blyth Road Hayes UB3 1HA	Sale of Alcohol Off only	From 07.00 hours until 23.00 hours everyday

3.6 Operating Schedule and Conditions

Section 18 of the operating schedule of the application demonstrates the steps the applicant proposes to take in order to promote the licensing objectives, which is as follows:

General

1. The Licensee shall ensure that all engaged in the sale or supply of alcohol shall have received training in relation to the protection of children from harm (including under-age sales), how to recognise drunkenness and the duty not to serve drunk persons. Refresher training shall be carried out at least every six months. The training must be given to a new member of staff before they are permitted to sell alcohol. Training records shall be kept on the premises for a minimum of 12 months and made immediately available to authorised police or licensing authority staff upon reasonable request. Those holding an appropriate licensing qualification and/or a Personal Licence shall be exempt from this requirement.

2. The Licensee shall ensure that a 'Challenge 25' scheme is operated, whereby any person who appears to be under 25 years of age is required to produce means of identification proving they are over 18 years of age. The only authorised means of identification shall be passport, UK photo driving licence, UK military ID or 'PASS' accredited card.
3. The Licensee shall ensure that signage is displayed advising customers that a 'Challenge 25' policy is in force.
4. In the event that a delivery service is undertaken, at the point of placing an order for alcohol either by telephone or via a website, customers will be informed that the premises operate a Challenge 25 policy and detail what forms of identification may be required upon delivery.
5. The Licensee shall ensure that a refusal book is maintained at the premises which details all refusals to sell age restricted products. Each entry shall, as a minimum, record the date and time of the refusal and the name of the staff member refusing the sale. All entries shall be made as soon as possible. The refusals book shall be made available to the Police/ Licensing Authority upon request.
6. The Licensee shall ensure that a written record is kept on the premises of all persons authorised by the DPS or a personal licence holder to sell or supply alcohol in their name. Such records shall be made available to the Police/Licensing Authority upon request.
7. The premises shall install and maintain a closed-circuit television surveillance (CCTV) system which at all times complies with the below requirements:
 - a) CCTV shall be provided in the form a recordable system, capable of providing pictures of evidential quality in all lighting conditions, particularly facial recognition.
 - b) CCTV cameras shall cover all public areas including all public entrances and exits.
 - c) CCTV Equipment shall be maintained in good working order, be correctly time and date stamped. Recordings shall be kept for a minimum period of 31 days;
 - d) At all times, whilst the premises is open for licensable activities, there shall be members of staff on call who is able to provide viewable copies of recordings to the police or licensing authority staff upon reasonable request.
 - e) The recording equipment and data storage devices shall be kept in a secure environment and fitted with security functions (such as passwords) to prevent recordings being tampered with.
8. The Licensee shall ensure that an incident log is maintained on the premises and made immediately to Police or licensing authority staff upon request. The log shall be completed as soon as is possible and shall record the following:
 - a) All crimes reported to the venue
 - b) All ejections of patrons
 - c) Any complaints received concerning crime and disorder
 - d) Any incidents of disorder

The Prevention of Crime and Disorder

See above

Public Safety

See above

The Prevention of Public Nuisance

See above

The Protection of Children from Harm

See above

4.0 CONSULTATION

4.1 Closing date for representations
16 December 2020

4.2 Public Notice published in local newspaper
18 November 2020 – Uxbridge Gazette

5.0 REPRESENTATIONS

5.1 We have received three representations from Interested

Interested Parties	Ground for Representation	Appendix
Mr Roy Stout	Prevention of Crime and Disorder and Prevention of Public Nuisance	Appendix 2
Malcolm and Eva Chapman	Prevention of Crime and Disorder and Prevention of Public Nuisance	Appendix 3

5.2 We have also received an email from the Metropolitan Police, raising no objection appended as **Appendix 4**.

6.0 BACKGROUND INFORMATION

6.1 Designated Premises Supervisor

The proposed designated Premises Supervisor is Kailasapillai Sivathasan is a personal licence holder under number 06KS-ooAQ-793N-XTMIN issued by the London Borough of Harrow.

6.2 Map of the area and photos of the premises and the surrounding area are attached as **Appendices 5 and 6**.

6.3 There have been no recorded Members' Enquires for this premises.

7.0 OFFICER'S OBSERVATIONS

7.1 This is an application for a Premises Licence for a new retail Co-op Welcome shop, selling a range of groceries as well as alcohol in a purpose-built retail unit on the ground floor of a residential building. The proposed hours for sale of alcohol are Monday to Saturday, 07.00 hours until 23.00 hours and Sunday 07.00 hours until 23.00 hours. In addition to the premises listed at 3.5 above the nearest off licences are situated in Clayton Road and Station Road. Following consultation with a local resident the applicant has agreed to reduce the terminal hour on a Sunday to 22.00. and this resulted in this resident withdrawing their representation.

7.2 The representations received mainly raise the following issues:

- a) **The Prevention of Crime and Disorder**- Both representations refer to the Crime and Disorder objective as there are concerns over the sale of alcohol adding to existing issues in the area leading to a rise in antisocial behaviour in the area. S.182 of the Home Office guidance refers to the Police as being the main source of advice on crime and disorder but in this case the Police have not raised an objection. Furthermore, our Council's Licensing Policy and the Guidance, both indicate that the hours that shops could generally be allowed to sell alcohol was to reflect the trading hours, unless there was a good reason to restrict this. The applicant has proposed conditions in the operating schedule to demonstrate the steps which he will take to uphold this licensing objective.

- b) **The Prevention of Public Nuisance** – Both representations refer to the Public Nuisance objective, the main concerns raised refer to the proposed hours for the sale of alcohol. The main view being that the hours of operation are excessive for the location and would cause noise disturbance for residents living above the shop, along with litter and general anti-social behaviour. In accordance with the Council's Licensing Policy, arbitrary restrictions that would undermine the principle of flexibility are always avoided and each case is judged on its individual merits. There is no fixed restriction on terminal hours for any areas of the borough.

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 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."

9.0 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".

10.0 LEGAL CONSIDERATIONS

When considering licence applications 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

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.

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 within the consultation period. Interested parties must live in the vicinity of the premises. 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 to:-

- To grant the licence, subject to the mandatory conditions and conditions consistent with the operating schedule;
- To impose additional relevant conditions to such an extent as is considered necessary for the promotion of the licensing objectives;
- To exclude any of the licensable activities to which the application relates;
- To amend the times for all or some of the licensable activities;
- To refuse to specify a person in the licence as the Premises Supervisor
- 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 Licence 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:

- eliminate discrimination harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- 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, race, religion or belief, sex sexual orientation, marriage and civil partnership and pregnancy and maternity.

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.