

Application for the variation of a premises licence: Shree News

Committee	Licensing Sub-Committee
Officer Contact	Steven Dormer, Licensing Officer
Papers with report	Appendix 1 - Application for a premises licence Appendix 2 - Current Licence Appendix 3 - Area Map Appendix 4 - Representations Appendix 5 - Petition Appendix 6 - Letter to Licence Holder Mr Patel Appendix 7 - Photos
Ward name	Northwood Hills

1.0 SUMMARY

To determine an application for the variation of a Premises Licence in respect of Shree News, 53 Salisbury Road, Eastcote, HA5 2NJ. (**Appendix 1**)

2.0 RECOMMENDATION

To refuse to grant the application on the following grounds. Based on my visits of the 24th February and 30th March 2021 the Licence Holder cannot uphold the conditions and operating schedule of the current licence. The conditions exist to uphold the Licensing Objectives. Mr Patel does not hold sufficient skills or knowingly can uphold the Licensing Objectives.

3.0 APPLICATION

The application is to increase the sale of alcohol to 22:00 Monday to Sunday. The current timings require the sale of alcohol to cease at 19:00. (**Appendix 2**)

3.1 Type of application applied for

Variation of premises licence application under the Licensing Act 2003, as amended.

3.2 Description of the premises

Retail unit situated on a parade of shops in a dense residential area. Near to three schools in the area. Shop sells newspapers, groceries, confectionery, and tobacco products. Premises is owned by Hillingdon Council.

3.3 Proposed sale of alcohol and opening hours

	Proposed Sale of Alcohol	Opening hours of the premises
Monday	06:00 – 22:00	06:00 - 19:00

Tuesday	06:00 - 22:00	06:00 - 19:00
Wednesday	06:00 - 22:00	06:00 - 19:00
Thursday	06:00 - 22:00	06:00 - 19:00
Friday	06:00 - 22:00	06:00 - 19:00
Saturday	06:00 - 22:00	06:00 - 19:00
Sunday	06:00 - 22:00	06:00 - 19:00

3.5 Other relevant premises licensed premises nearby (Appendix 3)

Premises	Activities Authorised	Times Authorised
MPS Food & Wine, 51 Salisbury Road, Eastcote, HA5 2NJ	Supply of alcohol off sales only	Monday to Saturday 08.00 hours to 23.00 hours Sunday 10.00 hours to 22.30 hours Good Friday 08.00 hours to 22.30 hours Christmas Day 12.00 hours to 15.00 hours and 19.00 hours to 22.30 hours

4.0 CONSULTATION

4.1 Closing date for representations

31 March 2021

4.2 Public Notice published in local newspaper

17 March 2021

4.3 ASBET

No relevant representation or record of Anti-Social Behaviour at this premises or the near vicinity.

4.4 Members Enquiries

One Members Enquiry to MP John McDonnell from a resident 31 March 2020. Concerns raised over the amount of alcohol displayed and sold at Shree News 53 Salisbury Road.

5.0 REPRESENTATIONS

5.1 Four representations have been received.

Name and Address	Grounds for Representation	Appendix
ClIr Duncan Flynn	Prevention of a public nuisance Prevention of Crime and Disorder	Appendix 4
Andrew Riley Northwood Hills Resident Association	Prevention of a public nuisance Prevention of Crime and Disorder	Appendix 4
Jacob Davis Hillingdon Council Estates Surveyor	Prevention of a public nuisance Prevention of Crime and Disorder	Appendix 4
Subasiny Vasanthakumar	Prevention of a public nuisance Prevention of Crime and Disorder	Appendix 4

5.2 **Petition**

5.1 Petition with 51 signatures asking for the application to be rejected. The lead petitioner is Subasiny Vasanthakumar who had submitted separate representation on the application. **(Appendix 5)**

6.0 BACKGROUND INFORMATION

6.2 There has been a Licence to sell alcohol at this premises since June 2017. The current Licence Holder has held the licence since January 2021. The premises is leased to the Licence Holder by Hillingdon Council Estates. The Estates Section have granted a lease with strict conditions on the sale of alcohol. Only ten percent of the items sold can be alcohol. The display cabinet must only be 3 metres in width.

7.0 OFFICER'S OBSERVATIONS

7.1 Officer Visit 24th February 2021

The Licensing Section received complaint of the premises selling alcohol past the permitted hours of 19:00. The Licensing Officer visited the premises of the evening of the 21 February 2021. At 19:05 when the Licensing Officer arrived at the premises, it was clear the premises was still trading. At 19:08 the Licensing Officer saw a man go into the premises and left with a bag containing what appeared to be cans of drink.

Correspondence was sent to the Licence Holder on the 01 March 2021 informing Mr Patel of the complaint. Mr Patel was informed on how to apply to vary the Premises Licence.

Officer Visit 30 March 2021

Breaches of the licence were witnessed:

- Proof of age policy Challenge 25 was not implemented;
- CCTV showing the incorrect time. Images of the CCTV monitors were poor quality;
- Premises not displayed in a prominent position.

On the 03 April 2021 a letter was sent to the Premises Licence Holder, outlining the breaches of the licence. The Licensing Officer informed in the letter that he would consult the Estates Team on the business operation hours and the restrictions relating to the selling of alcohol beyond the 19:00 closing time. **(Appendix 6)**

7.2 Photos **(Appendix 7)**

Photo 1 – A blank Hillingdon Council Trading Standards approved refusals register.

Photo 2 – The main chiller cabinet with alcohol displayed.

Photo 3 – Main point of sale for alcohol.

Photo 4 – Demonstrating the proximity to MPS Food and Wine.

Photo 5 – High Strength alcohol displayed behind the counter.

Photo 6 – CCTV Monitor showing grainy and unclear images.

7.3 Representations **(Appendix 4)**

Prevention of Crime and Disorder

The representations received have concerns that granting this variation would undermine this objective. Whilst trading hours are not necessarily a licensable activity, they do act as a mechanism for Local Authority to limit the hours a business can open. The reason for the hours being restricted for Shree News is to prevent accumulation of noise and disturbance to residents. Whilst the Police have not been able to provide any evidence of Anti-Social Behaviour or a spike in crime for Salisbury Road. It can be argued that this is because the restrictions imposed have been effective.

Prevention of a public nuisance

Much the same reasons for this being a concern as is crime and disorder. The restrictions exist to prevent a public nuisance for residents of Salisbury Road, Restrictions imposed by the Estates Section are there to prevent nuisance. No reports from the Anti-Social Behaviour Team of major concerns around this area. This again means the measures in place have been effective. Representations received have concerns that allowing this premises to operate past 19:00 will see an increase in Public Nuisance complaints.

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".

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 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 have 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

The Licensing hearing is governed by the Licensing Act 2003 (Hearings) Regulations. These provide that hearings should be held in public unless the Licensing Authority considers that the public interest in excluding the public outweighs the public interest in the hearing taking place in public.

If a Member of the Sub-Committee has a conflict of interest on the application being determined, they should not have any involvement in the decision making on the Application.

When considering an application to vary a Premises License, the Sub-Committee is required to carry out its functions with a view to 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.

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, a decision can be taken to:-

- i. To grant the variation to the Premise Licence;
- ii. To modify the conditions of the Premises Licence – this includes altering or omitting any existing conditions or adding any new conditions;
- iii. Reject the whole or part of the Application for Variation.

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 whole/part of the application for the variation of the 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, race, sexual orientation, marriage and civil partnership, pregnancy and maternity, religion belief.

Applications must be considered with regard to the principles of fair process and the Human Rights Act 1998.

The Applicant, Interested Parties, Responsible Authorities and any Interested Parties 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.