

Application for the grant of a Premises Licence: Herbies Pizza, 298 Kingshill Avenue, Hayes UB4 8BX

Committee	Licensing Sub-Committee
Officer Contact	Licensing Officer - Mark McDermott
Papers with report	Appendix 1 - Application for the grant of a new Premises Licence Appendix 2 - Plan of premises Appendix 3 - Representation from Ward Councillor Appendix 4 - Response by applicant to representation Appendix 5 - Agreed conditions as requested by Licensing Authority Appendix 6 - Map of the area Appendix 7 - Photo of the premises Appendix 8 - Companies House record
Ward name	Charville

1.0 SUMMARY

To consider an application for a new Premises Licence as seen in **Appendix 1** in respect of Herbies Pizza, 298 Kingshill Avenue, Hayes UB4 8BX which has attracted a representation from a local ward Councillor on behalf of residents.

2.0 RECOMMENDATION

To grant the licence until midnight Sunday to Thursday and 1,00 on Friday and Saturday.

3.0 APPLICATION

A new Premises Licence application has been made by Shoaib Tariq Raja on behalf of Laash Pizza Limited, trading as Herbies Pizza, Mr Raja is a Director of the company, please see companies house record at **Appendix 8**. The premises are situated at 298 Kingshill Avenue, Hayes UB4 8BX. The application is to authorise late night refreshment to enable the provision of hot food and drink between the hours of 23.00 and 02.00 Sundays to Thursdays and 23.00 and 03.00 on Fridays and Saturdays.

3.1 Type of application applied for

New Premises Licence application under Licensing Act, 2003.

3.2 Description of the premises

The premises are a Pizza restaurant on the ground floor with facilities for dining in and takeaway, it is situated within a parade of shops. Customers can also utilise home delivery by ordering by phone or via digital applications.

3.3 Licensable Activities

<u>Activity</u>		<u>Proposed for new premises licence</u>
Late Night Refreshment	Indoors	x

3.4 Opening Hours and proposed hours for licensable activity

	Opening hours of the premises	Proposed hours for Late Night Refreshment
Sunday to Thursday	12:00 - 02:00	23:00 - 02:00
Friday and Saturday	12:00 - 03:00	23:00 - 03:00

3.5 Other relevant licensed premises in the immediate vicinity

There is one licensed premise within the immediate vicinity, the Brook House pub.

Premises	Activities Authorised	Times Authorised
The Brook House 240 Kingshill Avenue UB4 8BL	(a) the sale by retail of alcohol	between 10.00 hours and 02.00 hours on the days following.
	(b) the provision of regulated entertainment (Indoors) being:-	
	• the exhibition of films	between 07.30hours and 02.30 hours on the days following
	• Indoor sporting events	between 12.00 hours and 0000 hours
	• playing recorded music	between 07.30 hours and 02.30 hours on the days following
	• performance of live music	Suns to Weds 12.00 hours and 00.00 hours
• performance of dance and	Thurs, Fri & Sat 12.00 hours and 00.00 hours	
• entertainment of a similar description		
the provision of late-night refreshment (Indoors)	between 23.00 hours and 02.30 hours on the days following	
Opening hours	between 07.30 hours and 02.30 hours on the days following	

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 the applicant provided as follows:

General

We shall ensure that all times when the premises are for our licensable activity, there are sufficient competent staff on duty at the premises for the purpose of fulfilling the terms and conditions of the licence and for preventing crime and disorder. We shall ensure that all staff will undertake training in their responsibilities although we are not trading in alcohol however we will make sure particularly with regard to drunkenness and underage persons visiting our premises. Records will be kept of training and refresher training.

The Prevention of Crime and Disorder

Any incidents of a criminal nature that may occur on the premises will be reported to the Police. We already have CCTV coverage at the premises and it is operated and maintained at the premises. The CCTV system will make sure that cameras must be sited to observe the entrance and exit doors both inside and outside, cameras on the entrances must capture full frame shots of the heads and shoulders of all people entering the premises i.e. capable of identification, cameras viewing till areas must capture frames not less than 50% of screen, cameras overlooking floor areas should be wide angled to give an overview of the premises, be capable of visually confirming the nature of the crime committed. 6. Provide a linked record of the date, time and place of any image, to provide good quality images -colour during opening times, operate under existing light levels within and outside the premises, have the recording device located in a secure area or locked cabinet, to have a monitor to review images and recorded picture quality, to be regularly maintained to ensure continuous quality of image capture retention, to have signage displayed in the customer area to advise that CCTV is in operation, digital images must be kept for 31 days, police will have access to images at any reasonable time, The equipment must have a suitable export method, e. G. CD/DVD writer so that the police can make an evidential copy of the data they require. This data should be in the native file format, to ensure that no image quality is lost when making the copy, if this format is non- standard (i.e. manufacturer proprietary) then the manufacturer should supply the replay software to ensure that the video on the CD can be replayed by the police on a standard computer. Copies must be made available to Police on request.

Public Safety

Appropriate fire safety procedures are in place including fire extinguishers (foam, H2O), fire blanket, internally illuminated fire exit signs, numerous smoke detectors and emergency lighting, all appliances are inspected regularly. All emergency exits shall be kept free from obstruction at all times.

The Prevention of Public Nuisance

All customers will be asked to leave quietly. Clear and legible notices will be prominently displayed to remind customers to leave quietly and have regard to our neighbours.

The Protection of Children from Harm

Being in trade of non-alcoholic food only, we are highly unlikely to be serving children at their own, however we are fully prepared to cope with any indecent activity being which may be harmful with regards to children.

4.0 CONSULTATION

4.1 Closing date for representations

14 July 2021.

4.2 Public Notice published in local newspaper

30 June 2021 – Uxbridge Gazette.

5.0 REPRESENTATIONS

5.1 We have received one representation from an Interested Party.

Interested Parties	Ground for Representation	Appendix
Councillor Nicola Brightman	Prevention of Public Nuisance	Appendix 2

6.0 BACKGROUND INFORMATION

6.1 Map of the area as **Appendix 6**

6.2 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 an existing Pizza restaurant/takeaway premises that are seeking to extend their current terminal hour of 23.00 to 02.00 Sunday to Thursday and 3.00 on Fridays and Saturdays. The premises are situated on a shopping parade that includes several other food led businesses that are not authorised for late night refreshment so do not trade past 23.00 hours. There is residential accommodation above the premises along the parade, so the concerns raised by residents to Councillor Brightman regarding the potential for public nuisance are justified and need to be addressed.

I have attempted to mediate with the applicant and objector by forwarding the representation to the applicant highlighting the request for a reduction in the hours sought. Agreement could not be reached, and I have attached the applicant's response to the Councillor's objection at **Appendix 4**.

The Operating Schedule provided by the Applicant was not extensive enough to uphold the objectives but additional conditions as agreed in **Appendix 5** with the Licensing Authority are appropriate and sufficient for the promotion of these.

7.2.1 The representation received mainly raised the following issues:

- a) **The Prevention of Public Nuisance** – The representation refers to the Public Nuisance objective following concerns raised by local residents to the potential for an increase in nuisance given the closeness of private dwellings to the establishment during the proposed extended hours. Reference is made to the potential impact of motorcycle deliveries rather than customer attending the premises in person. The general increase in noise from traffic, delivery drivers, staff, littering and anti-social behaviour is cited, and it is correctly asserted to my knowledge that no other premises on the parade operate after 23.00. It also indicated that noise carries further in the quiet hours of the night and I would concur that when noise occurs at unsociable hours of the day when the ambient noise is reduced it can cause sleep disruptions and impair the peaceful enjoyment of a resident's property thereby causing impacts on local 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 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 Hillingdon's Licensing Policy

Licensing Hours

At Paragraph 25.1 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 25.2 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 25.3 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 25.4 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".

Licence Conditions

At Paragraph 20.1 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 20.2 it states that "Conditions attached to licences by the Licensing Authority that have been proposed by the applicant in their operating schedule should be consistent with the steps set out in the operating schedule. This means that the effect of these conditions should be substantially the same as that intended by the terms of the operating schedule".

At Paragraph 20.3 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 20.4 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

10.1 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

10.2 Members should note that each objective is of equal importance. There are no other licencing objectives and the four objectives are paramount considerations at all times.

10.3 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.

10.4 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

10.5 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) Licencing Act 2003.

10.6 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 licencing authority, frivolous or vexatious s.18(7) Licensing Act 2003.

- 10.7 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 within the vicinity of the premises. All applications will be decided on a case by case basis.
- 10.8 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.
- 10.9 Conditions will not be necessary if they duplicate a current statutory requirement. The licencing Authority may therefore only impose such conditions that are necessary to promote the licensing objectives arising out of the consideration of the representations.
- 10.10 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.
- 10.11 The Council in its capacity as Licensing Authority has a duty to have regard to its public sector equality duty under s.149 of the Equality Act 2010. In summary s.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 relevant protected characteristics and persons who do not.
- 10.12 Section 149(7) of the Equality Act 2010 defines nine relevant protected characteristics these are:
- i. age
 - ii. gender reassignment
 - iii. being married or in a civil partnership
 - iv. being pregnant or on maternity leave
 - v. disability
 - vi. race including colour, nationality, ethnic or national origin
 - vii. religion or belief
 - viii. sex
 - ix. sexual orientation
- 10.13 Officers have provided the Sub-Committee with recommendations related to this application. Subject to the above-mentioned factors having been properly considered, the Sub-Committee may depart from the recommendations if there are good reasons for doing so. The Sub-Committee is advised that such departures could give rise to an appeal or judicial review.
- 10.14 Interested parties, Responsible Authorities and the Applicant have the right to appeal the decision of the Licensing 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.