

<b>SUBJECT:</b>	<b>APPLICATION FOR A VARIATION OF A PREMISES LICENCE at:</b> <b>Budgens, 79 Mandeville Road, Aylesbury, Buckinghamshire, HP21 8AG</b>
<b>Report Author</b>	<b>Kerryann Ashton – Licensing Officer</b>
<b>Ward/s Affected</b>	<b>Aylesbury South-East</b>

## 1. Purpose of Report

To provide Members with information enabling the determination of an application for a variation to the premises licence, in respect of which relevant representations have been received. The application has been submitted by Samy Limited (“the applicant”) in respect of **Budgens, 79 Mandeville Road, Aylesbury, Buckinghamshire, HP21 8AG** (“the premises”).

## 2. Background

- 2.1 The premises is next to a fish and chip shop and faces onto a paved area with railings around the perimeter and includes bench seating. There are parking spaces available for customers and residents to use to the side of the shops.
- 2.3 A location plan showing the premises is attached to this report marked **Appendix 1**. The current layout plan is attached as **Appendix 2**.
- 2.4 The premises currently have the benefit of a premises licence permitting the sale of alcohol for consumption off the premises. The licence was granted under delegated authority in 2005 there being no objections. The current licence permits sale of alcohol between the hours of 08:00 and 23:00 hours Monday to Saturday and between 10:00 and 22:30 on Sundays. A copy of the current licence is attached as **Appendix 3**.

## 3. The Application

- 3.1 This application is for a variation of the current premises licence to take immediate effect. A copy of the application is attached as **Appendix 4**.
- 3.2 The variations sought are as follows:

The application is to allow 24-hour sale of alcohol for consumption off the premises only, to add late night refreshment between the hours of 23:00 and 05:00 and to amend conditions in Annex 2 of the current licence, including removal of restricting sale of alcohol hours on Good Friday and Christmas Day.

<u>Current activities and hours</u>	<u>Proposed activities and hours</u>
Late night refreshment  N/A	2300 - 0500    Everyday
Sale of alcohol Off the premises 08:00 – 23:00 Monday to Saturday 10:00 – 22:30 Sunday	00:00 – 24:00 Everyday
Hours premises are open to the public  Not stated	00:00 – 24:00 Everyday

3.3 The steps the applicant intends to take to promote the licensing objectives are set out in the operating schedule (see appendix 3, section 16 of application form).

#### 4. Relevant Representations

##### 4.1 Responsible Authorities:

4.1.1 **The Chief Officer of Police:** Submitted a representation during the consultation period a copy of which is attached as **Appendix 5**.

4.1.2 **The Fire and Rescue Authority:** Response received: No comment

4.1.3 **The Local Planning Authority (Head of Sustainable Development):** No Response received

4.1.4 **The Local Environmental Health Authority (Head of Environmental Health):** Submitted a representation during the consultation period which has now been withdrawn on receipt of the revised operating schedule. A copy of the representation is attached as **Appendix 6**.

4.1.5 **Weights and Measures Authority (Trading Standards Officer):** No response received

4.1.6 **The Safeguarding and Child Protection Unit:** No response received

4.1.7 **The Licensing Authority:** Submitted a representation during the consultation period. A copy of which is attached as **Appendix 7**.

4.1.8 No responses were received from any other Responsible Authority.

4.2 **Other persons:** One valid objection was received during the 28-day consultation period which ended on the 8 March 2023. A copy of the representation is attached marked **Appendix 8**.

4.2 No letters of support were received during the consultation period.

4.3 On the 13 March the applicant's agent submitted a revised operating schedule which has been circulated to all parties. A copy of the revised operating schedule is attached as **Appendix 9**.

## 5. Licensing Officer's Observations:

5.1 The Relevant Representation mainly raises the follows issues:

- The prevention of public nuisance

5.2 In addition to the Mandatory Conditions, which together with the Conditions proposed by the applicant and the Responsible Authority are considered appropriate for recommendation to the Licensing Sub-Committee to address concerns raised in the objections if a Premises Licence is granted.

## 6. Policy Considerations

6.1 Regard must be given to the Council's Statement of Licensing Policy (published 4th March 2022) when determining this application. Of particular relevance (but not limited to) are the sections relating to Part C - promoting the licensing objectives and the Council's approach to preventing a public nuisance (page 35).

6.2 Paragraph 8.41 of the Guidance states: "In completing an operating schedule, applicants are expected to have regard to the statement of licensing policy for their area. ...applicants are also expected to undertake their own enquiries about the area in which the premises are situated to inform the content of the application."

6.3 The Guidance goes on to state, paragraph 8.42: "Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives that they understand:

- the layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children may congregate;
- any risk posed to the local area by the applicants' proposed licensable activities..."

6.4 Paragraph 8.43 states, "Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Finally, the Guidance states at paragraph 8.43, "It is expected that enquiries about the locality will assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives. For example, premises with close proximity to residential premises should consider what effect this will have on their smoking, noise management and dispersal policies to ensure the promotion of the public nuisance objective. Applicants must consider all factors which may be relevant to the promotion of the licensing objectives, and where there are no known concerns, acknowledge this in their application."

6.5 In relation to licence hours Paragraph 3.11 of Buckinghamshire Council's Policy states: "in line with the duty to promote the licensing objectives, the Licensing Authority's Policy is to respect the right of residents to peace and quiet. In general, the Licensing Authority will take a more stringent approach to licensing hours in areas of higher residential density where there is greater risk of public nuisance."

6.6 In paragraph 3.13 it states: "Shops, stores and supermarkets will 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. Further, in the case of individual shops which are known to be a focus of disorder and disturbance then, subject to representations from, for example, the police or other persons, a limitation on licensing hours may be appropriate.”

- 6.7 In relation to the prevention of a public nuisance licensing objective, Paragraph 3.35 states “Public nuisance relates to the negative effects of nuisances including noise, light, odour, dust and litter affecting, or likely to affect, at least a few separate households locally. The Licensing Authority is keen to protect the amenity of residents and businesses in the vicinity of licensed premises. At the same time the Licensing Authority is aware that the licensed trade is important to the local economy and promoting the Council’s culture and leisure aspirations. Consequently, the Licensing Authority will try and work together with statutory agencies, licensed businesses, residents and other businesses to reach a compromise in its decision making.”
- 6.8 In paragraph 3.36, states “the Licensing Authority will consider whether the measures proposed to deal with the potential for public nuisance having regard to all circumstances of the application, are adequate. Much weight will be placed on recommendations made by Environmental Health Officers in terms of preventing public nuisance.”
- 6.8 Regard must also be had to the national Guidance issued by the Home Office under Section 182 of the Licensing Act 2003, as amended. In relation to Prevention of Public Nuisance the Statutory Guidance states:
- 6.9 2.15: The 2003 Act enables licensing authorities and responsible authorities, through to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.
- 6.10 2.16: Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.
- 6.11 2.18: As with all conditions, those relating to noise nuisance may not be appropriate certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.

- 6.12 2.19: Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.
- 6.13 2.21: Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.
- 6.14 Regarding delivery services section 3.10 states “Persons who run premises providing ‘alcohol delivery services’ should notify the relevant licensing authority that they are operating such a service in their operating schedule. This ensures that the licensing authority can properly consider what conditions are appropriate. Premises with an existing premises licence, which choose to operate such a service in addition to their existing licensable activities, should contact their licensing authority for its view on whether this form of alcohol sale is already permitted or whether an application to vary the licence will be required.”
- 6.15 Paragraph 10.15 goes on to say “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.”

## 7. Resources, Risk and Other Implications

- 7.1 **Resource:** The only resource implications to date have been officer time however if the applicant or persons making relevant representations appeal against the decision of the Licensing Sub – Committee this would result in legal fees to defend the appeal and further costs. In the event of a successful appeal the Council may also have to pay the applicant/other party’s costs.
- 7.2 **Human Rights:** The Licensing Sub - Committee's decision regarding this application will have Human Rights implications in respect of both the Applicant and the persons making relevant representations which also need to be considered equally and fairly so that the decision is proportionate and the right balance is met. The referral of this matter to the Sub - Committee is laid down in the Licensing Act 2003, as amended and is also in accordance with Article 6 of the Human Rights Act 1998, the right to a fair hearing, which is an absolute right. The Applicant and the persons making relevant representations have been notified of the Hearing and invited to make representations. A statutory right of appeal to the Magistrates Court and the right (if it arises) to challenge the Sub-Committee's decision by way of Judicial Review to the High Court also ensure a fair hearing to both the Applicant and the persons making relevant representations.

- 7.3 Article 8 and Article 1 of the First Protocol - the right to respect for private/family life and peaceful enjoyment of property/possessions (including Licences) - also need to be considered. The persons making relevant representations have a right to respect for their private and family life and their home. They are entitled not to be disturbed by unreasonable noise and/or nuisance. However, this is a qualified right and has to be balanced against the rights of others including the rights of businesses in the area to operate.
- 7.4 Article 14 of the Human Rights Act 1998 - the right to freedom from discrimination, which is an absolute right – also needs to be considered. The human rights provided under the Human Rights Act 1998 must not be subject to discrimination under various headings, including race, national or social origins, association with a national minority group, or other status.
- 7.5 Interference with these rights is acceptable within the terms of the Human Rights Act 1998 if it safeguards the rights of others, is legitimate, proportionate and balanced in that there is a need to find a fair balance between the protection of individual rights and the interests of the community at large – other than rights under Article 6 and 14 which are absolute rights and cannot be interfered with.
- 7.6 Therefore if Members refuse to grant the application to vary the Premises Licence in whole or part or grant it subject to Conditions this will be a breach of the rights of the Applicant unless such refusal (in full or part) is and/or the Conditions imposed are appropriate, proportionate and can be justified, on balance, by being outweighed by the rights of the community at large to peaceful enjoyment of their property/possessions. Any restriction placed upon the Premises Licence must not go beyond what is strictly necessary to achieve its legitimate purpose in order to mitigate the interference with the community at large's enjoyment of their property/possessions.
- 7.7 By taking into consideration all the material considerations relating to this application and balancing the interests/rights of all parties involved it is considered that the Licensing Sub-Committee's decision will be both proportionate and justified having had regard to the Human Rights Act 1998.
- 7.8 The Equality Act 2010, including the Council's Public Sector Equality Duty, must be taken into account when making decisions in relation to licensing applications.

## **8. Determination by the Licensing Sub-Committee**

- 8.1 The Sub Committee is obliged to determine applications in the light of the above and any other material considerations with a view to promoting the four licensing objectives, which are:
- The prevention of crime and disorder
  - Public safety
  - Prevention of public nuisance
  - Protection of children from harm

Regard must also be had to the Council's Licensing Policy, Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended, relevant representations received and the evidence presented at the Hearing.

- 8.2 Each application must be considered on its own merits and any conditions attached to premises licences must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed, may be unlawful where they cannot be shown to promote the licensing objectives in any individual case.
- 8.3 The Sub Committee must avoid duplication of other legal requirements and should only impose conditions on a premises licence which are appropriate and proportionate for the promotion of the licensing objectives and where additional and/or supplementary measures are required in order to promote the licensing objectives.
- 8.4 The following options are available to the Licensing Sub Committee:

- 8.4.1 Grant the Variation Application in full or part - subject to any Conditions to be attached to the premises licence (which modify, or add to or vary the Conditions already imposed on it) which are consistent with the Operating Schedule and which are considered appropriate and proportionate for the promotion of the four licensing objectives in response to relevant representations received - and any relevant Mandatory Conditions.

On a "without prejudice" basis, a draft list of **proposed Conditions** is attached to this Report marked "The Schedule".

- 8.4.2 Reject the whole of the Variation Application.

- 8.4.3 Grant the Variation Application subject to different conditions for different parts of the premises or licensable activities if this is considered appropriate and proportionate to promote the four licensing objectives and in response to the representations received).

- 8.5 The Sub-Committee is asked to note that:

- 8.5.1 It may not reject the whole or part of the application or modify or add to or vary the existing conditions - merely because it considers it desirable to do so. It must actually be **appropriate and proportionate** in order to promote the four licensing objectives and be in response to the representations received and full reasons must be given for the Sub-Committee's decision.

- 8.5.2 When determining the application to vary the Premises Licence consideration must be given to the effect of the variations proposed. Any modification or variation to Conditions or any additional Conditions to be added to the Premises Licence must also be as a result of the effect of the variation if granted on the promotion of the four licensing objectives.





## **THE SCHEDULE**

### **The Mandatory Conditions**

#### **Annex 1 – Mandatory conditions**

For the purposes of this schedule

"the Act" means the Licensing Act 2003;

"Anti-Social Behaviour" has the meaning given in section 36 of the Anti-social Behaviour Act 2003;

"Disability" has the meaning given in section 1 of the Disability Discrimination Act 1995;

"Relevant Premises" has the meaning given in paragraphs (a) and (b) of the definition in section 159 of the Act;

"Responsible Person" has the meaning given in paragraphs (a) and (b) of the definition in section 153(4) of the Act (the relevant parts of which are attached to this licence).

#### **Mandatory Condition - s19 of the Licensing Act 2003 - Supply of Alcohol**

No supply of alcohol may be made under the premises licence:

- (a) at a time when there is no designated premises supervisor in respect of the premises licence, or
- (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

Every supply of alcohol under the premises licence must be made authorised by a person who holds a personal licence

#### **MANDATORY CONDITIONS SPECIFIED BY THE LICENSING ACT 2003 (MANDATORY LICENSING CONDITIONS) ORDER 2010 AS AMENDED BY THE LICENSING ACT 2003 (MANDATORY LICENSING CONDITIONS)(AMENDMENT) ORDER 2014:**

##### **Mandatory Condition 1**

(1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises:-

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to:-

(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or .

(ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective; .

(c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective; .

- (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner; .
- (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

#### Mandatory Condition 2

The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

#### Mandatory Condition 3

- (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either:-
  - (a) a holographic mark, or .
  - (b) an ultraviolet feature.

#### Mandatory Condition 4

The responsible person must ensure that:-

- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures:-
  - (i) beer or cider: ½ pint; .
  - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and .
  - (iii) still wine in a glass: 125 ml; .
- (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and .
- (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available."

### **MANDATORY CONDITIONS SPECIFIED BY THE LICENSING ACT 2013 (MANDATORY CONDITIONS) ORDER 2014:**

#### Mandatory Condition 5

- 1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
- 2. For the purposes of the condition set out in paragraph 1:-
  - (a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
  - (b) "permitted price" is the price found by applying the formula:-
$$P = D + (D \times V)$$

Where:-

- (i) P is the permitted price,
- (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and

- (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
  - (c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence:-
    - (i) the holder of the premises licence,
    - (ii) the designated premises supervisor (if any) in respect of such a licence, or
      - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
  - (d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
  - (e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.
3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
4. (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.
- (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

### **Proposed conditions**

Annex 2 –Conditions consistent with the operating schedule - To be added to current operating schedule

General licensing objective  
Not stated

The Prevention of Crime and Disorder

1. A digital CCTV system will be installed, or the existing system maintained, such system to be fit for the purpose.
2. The CCTV system shall be capable of producing immediate copies on site. Copies of recordings will either be recorded digitally on to CD/DVD or other equivalent medium.
3. Any recording will be retained and stored in a suitable and secure manner for a minimum of 31 days and shall be made available, subject to compliance with Data Protection legislation, to the police for inspection on request.
4. The precise positions of the camera may be agreed, subject to compliance with Data Protection legislation, with the police from time to time.
5. The system will display, on any recording, the correct time and date of the recording.
6. The CCTV system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity

Public Safety

1. There will at all times be adequate levels of staff maintained at the premises. Such staff levels will be disclosed, on request, to the licensing authority and police.

The Prevention of public nuisance

1. Adequate waste receptacles for use by customers shall be provided in and immediately outside the premises

Protection of children from harm

1. The premises licence holder will ensure that an age verification policy will apply to the premises whereby all cashiers will be trained to ask any customer attempting to purchase alcohol, who appears to be under the age of 25 years (or older if the licence holder so elects) to produce, before being sold alcohol, identification being a passport or photocard driving licence bearing a holographic mark or other form of identification that complies with any mandatory condition that may apply to this licence.
2. Signage informing customers of the age verification policy adopted at the premises will be prominently displayed.

**Informative/s -**

This Premises Licence does not purport to grant planning permission for the use of the premises hereby permitted by this Licence and/or for the hours of operation hereby permitted by this Licence and the Applicant is advised to contact the Planning Department to check compliance with the relevant planning legislation/requirements and to submit any necessary planning applications prior to operation.

Officer Contact: Kerryann Ashton (01296 585 560)  
email address: [kerryann.ashton@buckinghamshire.gov.uk](mailto:kerryann.ashton@buckinghamshire.gov.uk)

<b>Background Papers:</b>	<ul style="list-style-type: none"><li>• Application ref PR202302-293748</li><li>• Licensing Act 2003, as amended</li><li>• Licensing Policy – Buckinghamshire Council published March 2022</li><li>• Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended</li></ul>
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