

Buckinghamshire Council

Licensing Sub-Committee Hearing
Date: 14 July 2020

SUBJECT:	APPLICATION FOR A NEW PREMISES LICENCE at: Wing Supermarket, 16 Stewkley Road, Buckinghamshire, LU7 ONE
Report Author	Kerryann Ashton - Licensing Officer
Ward/s Affected	Wing

1. Purpose of Report

To provide Members with information enabling the determination of an application for a new Premises Licence, in respect of which relevant representations have been received. The Application has been submitted by Mr. Sethjit Singh (“the applicant”) in respect of Wing Supermarket at 16 Stewkley Road, Bucks LU7 ONE (“the premises”).

2. Background

2.1 The premises consist of a retail premises and an adjacent piece of land.

2.2 The premises is situated *a short distance from the busy A418 road at the end of a small parade of other business premises. The area is however predominantly residential, with residential dwellings to the immediate north, south and west of the premises. The premises is not located within a cumulative impact policy area.*

A location plan showing the premises location is attached to this report marked Appendix 1 and a layout plan of the interior of the premises is attached as Appendix 2.

3. The Application

3.1 This application is for a new Premises Licence to commence on 1 August 2020. A copy of the application is attached to this Report marked Appendix 3.

3.2 The licensable activities sought are as follows:

<u>Proposed activity</u>	<u>Proposed hours</u>
<p><i>Supply of alcohol (Off the premises)</i></p> <p><i>Standard days and timings:</i></p>	<p>7 am -10 pm Monday to Friday 10 am - 10pm Saturday and Sunday</p>
<p><i>Hours premises are open to the public</i></p> <p><i>Standard days and timings:</i></p>	<p>7 am -10 pm Monday to Sunday inclusive</p>

4. Relevant Representations

4.1 Responsible Authorities:

- 4.1.1 **The Chief Officer of Police:** Response received - *no objection*
- 4.1.2 **The Licensing Authority:** Response received - Objections received copy attached to this Report marked Appendix 4. This objection will be addressed by an agreed amendment of the application by the applicants by additional conditions being attached to the Premises Licence if granted.
- 4.1.3 **The Fire and Rescue Authority:** Response received - *no objection*
- 4.1.4 **The Local Planning Authority (Head of Sustainable Development):** Response received - *no comment*
- 4.1.5 **The Local Environmental Health Authority (Head of Environmental Health):** Response received - *no comment*
- 4.1.6 **Weights and Measures Authority (Trading Standards Officer):** Response received - *no comment*
- 4.1.7 **The Safeguarding and Child Protection Unit:** Response received - *no comment*
- 4.1.8 **The Primary Care Trust:** Response received - *no comment*
- 4.1.9 No responses were received from any other Responsible Authority.

4.2 **Any other persons:** *3 objections were received during the 28 day consultation period which ended on 17 June 2020 a copy of which are attached marked Appendix 5.*

4.3 A further 8 representations were received but not deemed relevant under S(18)(6)(a) of the Licensing Act 2003 as amended as they did not concern the likely effect of the grant of the premises licence on the promotion of the licensing objectives

4.4 No letters of support were received.

5. Licensing Officer's Observations:

5.1 The Relevant Representations received raise the follows issues:

- *Public Safety*
Public Safety concerns are mentioned in several of the objections, however these relate to parking and highways concerns.
- *The prevention of public nuisance*
Two of the representations state that Anti- social behaviour already exists around the shop.

Objectors state that providing a liqueur licence (premises licence) to run from 07:00 - 22:00 7 days a week will cause a public nuisance on the grounds of noise and unsavoury behaviour in what is a residential area. There will be the inevitable clashes between residents and the groups hanging round the shop late into the evening.

Another objector also states the opening hours are of concern because selling until 10pm is likely to result in noise disturbance late at night. And also feel that the licence will cause an increase in revellers hanging around the premises and causing a disturbance and antisocial behaviour.

5.2 The Mandatory Conditions, together with the Conditions proposed by the applicant and the Responsible Authority set out in The Schedule to this report 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 had to the Council's adopted Licensing Policy published November 2015 when determining this application. Of particular relevance (but not limited to) is section 4.7, which details the Council's approach to licensing hours.

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.

- 6.2 Regard must also be had to the national Guidance issued by the Home Office under Section 182 of the Licensing Act 2003, as amended. Of particular relevance is section 10.15 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. Links to Council Policy Objectives

- 7.1 Licensing contributes to the Council's key priorities of strengthening communities by enabling more leisure opportunities. Appropriate use of licensing controls helps protect the vulnerable by ensuring only well run premises that promote the protection of children from harm are permitted to provide licensable activities. Efficient and effective application of licensing arrangements helps promote prosperity by ensuring interventions are targeted to problem areas, while compliant businesses are encouraged to flourish. In addition, licensed operations provide good employment opportunities for local residents and encourage tourism.

8. Resources, Risk and Other Implications

- 8.1 **Resource:** The only resource implications to date have been officer time however if the applicant or persons making relevant representations appeals 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.
- 8.2 **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.
- 8.3 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.

- 8.4 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.
- 8.5 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 can not be interfered with.
- 8.6 Therefore if Members refuse to grant the application for a new 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.
- 8.7 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.
- 8.8 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.

9. Determination by the Licensing Sub-Committee

- 9.1 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. 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.
- 9.2 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.

- 9.3 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.
- 9.4 The following options are available to the Licensing Sub Committee:
- 9.4.1 Grant the Premises Licence - subject to any Conditions 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 suggested Conditions is attached to this Report marked “The Schedule”).
 - 9.4.2 Exclude from the scope of the Premises Licence granted under Para 9.4.1 above any of the licensable activities to which the application relates.
 - 9.4.3 Refuse to specify a person in the Premises Licence granted under Para 9.4.1 as the premises supervisor.
 - 9.4.4 Reject the whole of the Application.
 - 9.4.5 Grant the Premises Licence subject to different conditions for different parts of the premises or the different /reduced licensable activities if this is considered appropriate and proportionate to promote the four licensing objectives and in response to the representations received).
- 9.5 The Sub-Committee is asked to note that it may not reject the whole or part of the application or attach conditions - merely because it considers it desirable to do so. It must actually be **appropriate and proportionate** in order to promote the 4 licensing objectives and be in response to the representations received and full reasons must be given for the Sub-Committees decision.

THE SCHEDULE

The Mandatory Conditions

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 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 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(a);
 - (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(b).

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.

The Schedule

Proposed conditions

A set of alternate conditions have been drafted by the licensing authority in their capacity as a responsible authority based on the applicant's operating schedule as shown below. New conditions, which are in addition to those proposed in the operating schedule, have been highlighted in bold text. The Applicant has agreed to these conditions being imposed if the application is granted

General

1. Staff engaged in the service of customers at the premises shall be trained in the promotion of the licensing objectives as are commensurate with their duties. This shall include training on awareness of local alcohol related issues, including sessions at least once per month at which staff shall exchange information and experiences on any such issues that may have arisen. The training shall be recorded in a training record which shall not be removed from the premises, except in case of emergency or for the purposes of copying, until a period of 12 months has expired since the last entry that has been recorded. The training record shall be made available to Police and authorised council officers on request.

The prevention of crime and disorder

2. A closed circuit television system shall be maintained in all internal areas of the premises where alcohol is kept for selection and purchase by the public as well as all public entrances and exits.

3. The system shall be capable of recording images of sufficient quality to enable facial recognition and shall record continuously with a date and time stamp applied to the recording to show when the recording was made. All recordings shall be retained for a period of no less than 31 days from the date of recording and the system shall be capable of producing copies of the recordings in a format that can be viewed on domestic-grade reproduction equipment of a computer.

4. A staff member from the premises who is trained and conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open to the public. This staff member must be able to show a Police or authorised council officer recent data or footage with the minimum of delay when requested, subject to compliance with the Data Protection Act.

5. A policy of zero tolerance towards the possession and/or supply of illegal drugs shall be implemented at the premises.

6. Alcohol shall not be sold to customers in an open container.

Public Safety

7. A written fire risk assessment shall be maintained at the premises and appropriate fire safety equipment installed and adequately maintained.

8. Staff at the premises shall be first aid trained and an adequate supply of first equipment shall be maintained at the premises.

The prevention of public nuisance

9. The immediate area outside the premises shall be maintained to ensure any litter generated by the premises or its customers will be regularly cleared/swept.

10. Prominent notices shall be displayed at entrances/exits reminding customers that the premises is located in a residential area and to respect neighbours when leaving the premises.

11. Customers shall not be permitted to consume alcohol in any outside areas within the curtilage of the premises.

12. Customers purchasing alcohol shall be actively discouraged from consuming alcohol in the immediate vicinity of the premises by signage and if necessary reinforced with verbal reminders. Staff shall routinely monitor the outside of the premises to ensure customers comply with this requirement.

The protection of children from harm

13. A Challenge 25 scheme will be adopted in compliance with the age verification condition. Customers who appear to be under 25 years of age will be required to prove their age when purchasing alcohol. Suitable forms of identification will be a passport, Holographic 'PASS' scheme card or other identification recognised by the licensing authority in its statement of licensing policy.

14. Challenge 25 posters shall be clearly displayed at the premises.

15. A refusals register shall be created and maintained which records all sales of alcohol refused by the premises. The register shall be retained for inspection at the premises whilst it is open for licensable activities for a period of no less than 6 months from the date of the last entry in the register being made.

Informative

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: <u>kerryann.ashton@buckinghamshire.gov.uk</u>
Background Papers:	Application Ref PR202005-236157 Licensing Act 2003, as amended Licensing Policy - Aylesbury Vale Area Published November 2015. Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended.