

REPORT OF THE DIRECTOR OF RESILIENT COMMUNITIES TO THE**LICENSING SUB – COMMITTEE****1 MARCH 2023****APPLICATION FOR A PREMISES LICENCE VARIATION****UNDER SECTION 34 OF THE LICENSING ACT 2003**

**Nisa Local
152 Beacon Road
Great Barr
B43 7BN**

1. Summary of Report

- 1.1. The purpose of this report is for the Licensing and Safety Sub-Committee to determine an application for the variation of a premises licence in respect of Nisa Local, 152 Beacon Road, Great Barr, B43 7BN. The premises is described as a convenience store and seeks permission to extend the sale of alcohol by 1 hour at the start of the day and by 3 hours towards the close of business.
- 1.2. The licence holders (M & M Family 9 Limited) also seek to add of Late Night Refreshment from 23:00 – 01:00 to sell hot pies, savouries, soup and hot drinks.
- 1.3. The licence holders also look to replace existing conditions with new conditions.
- 1.4. Prasanna Ganeshalingam is specified as the Designated Premises Supervisor.
- 1.5. During the consultation period, the Licensing Authority received 17 representations from 'Other persons' and also a representation from West Midlands Police objecting to the grant of the variation.

2. Options

- 2.1. The Sub-Committee is required to hold a hearing to consider the application and relevant representations and determine whether to:
- grant the variation as applied for;
 - grant the variation with modifications or conditions; or
 - refuse the variation application.

3. Background Information

- 3.1. The current premises licence is attached as **Appendix 1**. Currently the premises is licensed to sell alcohol for consumption off the premises Monday to Sunday 08:00 – 22:00.
- 3.2. The current premises licence was granted on the 1 September 2008. M & M Family 9 Limited have held the premises licence since 5 December 2022.
- 3.3. The application for variation was received by the Licensing Authority on the 4 January 2023. A copy of the application is attached as **Appendix 2**.
- 3.4. A summary of the variation and current licensable activities and times applied for is provided in the table below:

Licensable Activities/ Opening Hours	Days	Current	Proposed
Sale of alcohol for consumption off the premises (only)	Monday to Sunday (inclusive)	08:00 – 22:00	07:00 – 01:00
Late Night refreshment	Monday to Sunday (inclusive)	N/A	23:00 – 01:00
Hours open to public	Monday to Sunday (inclusive)	08:00 – 22:00	06:00 – 01:00

- 3.5. The variation also seeks to remove the conditions of the current licence and replacing them with conditions as per the application. A list of all the conditions to be removed, and all proposed conditions can be found in **Appendix 3**.

- 3.6. In accordance with regulations the application was served on all the statutory 'responsible authorities'.
- 3.7. The Licensing Act 2003 specifies that new premises licence applications must be advertised in the following ways:
- a) by way of a blue site notice displayed at or on the premises for a statutory consultation period of 28 consecutive days starting on the day after the day on which the valid application was given to the Licensing Authority. The last day for representations was **01 February 2023**.
 - b) by publishing a licensing notice in a newspaper (or similar) circulating within the area of the premises, by the tenth working day of the consultation period; and
 - c) by publication of a notice on the Licensing Authority's website for no less than 28 days during the consultation period.
- 3.8. This combination of requirements ensures that 'other persons', regardless of their status or geographic proximity to the premises, are aware that an application for a premises licence has been made and of their right and opportunity to comment, should they wish to do so.
- 3.9. The blue notice was displayed and the newspaper notice published in accordance with the requirements of the Licensing Act 2003.
- 3.10. Any responsible authority, or other person, may submit a representation to the Licensing Authority, however generally only relevant representations received during the advertised consultation period may be considered when determining the application.
- 3.11. The applicant has nominated herself as the Designated Premises Supervisor (DPS). She holds a personal licence with Walsall Council.

4. Representations

4.1. Representations/Responses from Responsible Authorities

The Licensing Authority received the following responses to the consultation from responsible authorities:

Community Protection

On the 5 January 2023, Walsall Council's Community Protection team responded with no comments to the application. A copy of the response is attached as **Appendix 4**.

West Midland Fire Service

On 17 January 2023, West Midland Fire Service confirmed that they had no comments or concerns in respect of the application. The email response is attached as **Appendix 5**.

West Midlands Police

On 5 January 2023, the Police Licensing Officer confirmed that West Midlands Police will be objecting to this variation and the applicant have been advised prior to the submission of this variation, the Police would not support such an application. A copy of the email is attached as **Appendix 6**. West Midlands Police submitted their representation objecting to the grant of the variation on the 25 January 2023. A copy of the representation is attached as **Appendix 7**. West Midlands Police believe that the granting of the variation would undermine the following Licensing Objectives:

- The prevention of crime and disorder;
- The prevention of public nuisance; and
- Public safety.

The police representation refers to:

- On going problems of Crime & Disorder and Anti-social behaviour;
- Area is known meeting place for youths;
- Youths congregating in the area harassing members of the local community.
- Location is a hot spot for vehicles to frequent with occupants engaging in drinking alcohol and consuming illegal drugs of an evening.
- Various assaults in area, vehicles being attacked and stolen.

Other responsible authorities

No comments were received from any other responsible authorities in relation to this application.

4.2. **Representations from ‘other persons’**

The Licensing Authority are in receipt of 17 representations from ‘other persons’ objecting to the grant of the variation on the grounds of Crime & Disorder, Public Nuisance and Public Safety. Copies of the representations are attached as **Appendix 8**.

5. Walsall Council Licensing Policy (in effect from September 2021)

A copy of the council's statement of licensing policy can be found by following the link below:

[Statement of licensing policy | Walsall Council](#)

- 5.1. **Appendix 9** is a plan outlining other licensed premises within 100 metres of Nisa Local, 152 Beacon Road. This also includes the type of premises and also the licensed hours permitted for the premises within close proximity of Nisa Local.

6. Resource Considerations

- 6.1. **Financial:** Application fees are set by central government and are non-refundable. The Licensing Authority would have to cover the cost of any successful appeals made to magistrate's court.
- 6.2. Any decision taken by the Licensing Authority may be appealed to the Magistrates' Court. The Licensing Authority would have to bear the costs of defending such an appeal.
- 6.3. **Legal:** Any representations received must be relevant to the likely effect on the promotion of the licensing objectives in respect of the application received, namely: Prevention of Crime and Disorder, Public Safety, Prevention of Public Nuisance, Protection of Children from Harm. Representations, which are not relevant, must be rejected.
- 6.4. The Licensing Authority upon receipt of relevant representations and only if it is considered to be appropriate to promote the licensing objectives may consider attaching additional conditions, modifying existing conditions as given in the operating schedule, or to reject the application.
- 6.5. Any conditions further imposed by the committee must be appropriate and should be tailored to the size, style, characteristics and activities taking place at the premises. They should not be merely aspirational and should not go further than what is needed for that purpose.
- 6.6. Walsall Council has stated that at all times the Licensing Authority will try to strike a fair balance between the benefits to the community of a licensed venue and the risk of disturbance to local residents.
- 6.7. The Licensing Sub Committee must have due regard to the licensing authorities licensing policy statement and the statutory guidance issued under section 182 of the Licensing Act 2003.

7. Relevant Extracts from Section 182 Guidance:

- 7.1. The section 182 guidance issued under the Licensing Act 2003 states: *“Licensing authorities should look to the police as the main source of advice on crime and disorder.”*
- 7.2. *1.17 - Each application must be considered on its own merits and in accordance with the licensing authority’s statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location 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 be appropriate for the promotion of the licensing objectives in an individual case.*
- 7.3. *2.7 - Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning.*
- 7.4. *2.15 - The 2003 Act enables licensing authorities and responsible authorities, through representations, 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.*
- 7.5. *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.*
- 7.6. *2.8 - A number of matters should be considered in relation to public safety. These may include:*

- *Fire safety;*
- *Ensuring appropriate access for emergency services such as ambulances;*
- *Good communication with local authorities and emergency services, for example communications networks with the police and signing up for local incident alerts (see paragraph 2.4 above);*
- *Ensuring the presence of trained first aiders on the premises and appropriate first aid kits;*
- *Ensuring the safety of people when leaving the premises (for example, through the provision of information on late-night transportation);*
- *Ensuring appropriate and frequent waste disposal, particularly of glass bottles;*
- *Ensuring appropriate limits on the maximum capacity of the premises (see paragraphs 2.12-2.13, and Chapter 10; and*
- *Considering the use of CCTV in and around the premises (this may also assist with promoting the crime and disorder objective).*

- 7.7. *3.12 - Schedule 2 to the 2003 Act provides a definition of what constitutes the provision of late night refreshment. It involves the supply of 'hot food or hot drink' between the hours of 23.00 and 05.00 to the public for consumption on or off the premises. It includes the supply of hot food or hot drink between those hours on premises to which the public has access. Under Schedule 2, food or drink is considered to be 'hot' if, before it is supplied, it has been heated on the premises or elsewhere for the purpose of enabling it to be consumed at a temperature above the ambient air temperature and at the time of supply it is above that temperature; or after it is supplied, may be heated on the premises for the purpose of enabling it to be consumed at a temperature above the ambient air temperature.*
- 7.8. *3.14 - Some premises provide hot food or hot drink between 23.00 and 05.00 by means of vending machines. The supply of hot drink by a vending machine is not a licensable activity and is exempt under the 2003 Act provided the public have access to and can operate the machine without any involvement of the staff.*
- 7.9. *3.21 - The provision of late night refreshment is regulated primarily because it is often linked to alcohol-fuelled crime and disorder in the night-time economy, such as at fast-food takeaways where late-night drinkers congregate. However, these safeguards may not be needed everywhere or for every type of late night refreshment business. For example, some late-night cafés serving hot drinks after 23.00 may be located nowhere near pubs and nightclubs or areas associated with alcohol-related crime and disorder.*
- 7.10. *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.*

- 7.11. 14.19 - *There can be confusion about the difference between the “need” for premises and the “cumulative impact” of premises on the licensing object “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.*
- 7.12. 8.43 - *“Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Where specific policies apply in the area (for example, a cumulative impact policy), applicants are also expected to demonstrate an understanding of how the policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy.*
- 7.13. 9.4 - *A representation is “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives.*

8. Relevant Representations

8.1. In determining whether a representation is 'relevant', and may therefore be taken into account, the Sub-Committee must have regard to Sections 18(6) and 18(7) of the Licensing Act 2003, which state:

8.2. 18 (6) For the purposes of this section, "relevant representations" means representations which—

- (a) are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives;
- (b) meet the requirements of subsection (7);
- (c) if they relate to the identity of the person named in the application as the proposed premises supervisor, meet the requirements of subsection (9); and
- (d) are not excluded representations by virtue of section 32 (restriction on making representations following issue of provisional statement).

18 (7) the requirements of Section 18 subsection (7), referenced above, are—

- (a) that the representations were made by a responsible authority or other person] within the period prescribed under section 17(5)(c);
- (b) that they have not been withdrawn; and
- (c) in the case of representations made by a person who is not a responsible authority , that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious

8.3. Licensing Objectives

The Licensing Objectives are:

- The prevention of crime and disorder;
- The prevention of public nuisance;
- The protection of children from harm; and
- Public Safety.

8.4. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant.

8.5. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For

representations in relation to variations to be relevant, they should be confined to the subject matter of the variation.

- 8.6. There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.
- 8.7. Should the Sub-Committee decide to grant the licence with additional conditions, such conditions must comply with the requirements specified in the Section 182 Guidance - specifically:

1.16 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions:

- must be appropriate for the promotion of the licensing objectives;
 - must be precise and enforceable;
 - must be unambiguous and clear in what they intend to achieve;
 - should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
 - must be tailored to the individual type, location and characteristics of the premises and events concerned;
 - should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
 - should not replicate offences set out in the 2003 Act or other legislation;
 - should be proportionate, justifiable and be capable of being met;
 - cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
 - should be written in a prescriptive format.
- 8.8. Conditions must be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises (see paragraph 10.10). For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally.

Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and

it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.

- 8.9. The 2003 Act enables licensing authorities and responsible authorities, through representations, 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.
- 8.10. Applicants have the opportunity to demonstrate how they intend to promote the licensing objectives through the operating schedule, section 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.

They must also be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives, and to demonstrate knowledge of their local area when describing the steps they propose to take to promote the licensing objectives. Licensing authorities and responsible authorities are expected to publish information about what is meant by the promotion of the licensing objectives and to ensure that applicants can readily access advice about these matters. However, 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”.

- 8.11. Applicants are 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; and
 - any local initiatives (for example, local crime reduction initiatives or voluntary schemes including local taxi-marshalling schemes, street pastors and other schemes) which may help to mitigate potential risks.
- 8.12. Applicants are expected to provide licensing authorities with sufficient information in this section to determine the extent to which their

proposed steps are appropriate to promote the licensing objectives in the local area. Applications must not be based on providing a set of standard conditions to promote the licensing objectives and applicants are expected to make it clear why the steps they are proposing are appropriate for the premises.

- 8.13. 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.
- 8.14. 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.
- 8.15. 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.
- 8.16. The Licensing Sub Committee may grant the application as requested, grant with additional/modified conditions attached to the premises licence or reject the application.
- 8.17. Where the applicant, a responsible authority, or other person who has made a relevant representation is aggrieved by the decision of the Licensing Authority, they may appeal to the Magistrates' Court.

8.18. Staffing issues:

None arising from this report.

9. Citizen Impact

- 9.1. Residents or businesses ('Other Persons') within the licensing authorities' area are able to submit 'relevant representations'

10. Community Safety

- 10.1. Issues raised in relation to potential public safety are addressed by committee through the decision-making process.

11. Environmental Impact

11.1. Nothing arising from this report.

12. Performance and Risk Management Issues

12.1. Nothing arising from this report.

13. Equality Implications

14.1 When considering this application and reaching a determination the Licensing Authority must always have due regard to the Public Sector Equality Duty set out in section 149 of the Equality Act 2010:

A public authority must, in the exercise of its functions, have due regard to the need to—

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

14. Consultation

14.1. Consultation/advertising is carried out in accordance with prescribed statutory regulation.

15. Associated Papers

Appendix 1 – Current Premises Licence.

Appendix 2 – Application to vary Premises Licence

Appendix 3 – All existing Conditions to be removed and replaced with New conditions.

Appendix 4 – Response from Community Protection

Appendix 5 – response from west Midlands Fire Service

Appendix 6 – Email from West Midlands Police with intention to make representation

Appendix 7 – representation from West Midlands Police

Appendix 8 – representations from Other Persons

Appendix 9 – Licensed Venues within 100 metre radius.

16. Contact Officer

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