



REPORT OF THE DIRECTOR OF RESILIENT COMMUNITIES TO THE

LICENSING SUB – COMMITTEE

WEDNESDAY 5 FEBRUARY 2025

APPLICATION FOR A NEW PREMISES LICENCE

UNDER SECTION 17 OF THE LICENSING ACT 2003

**Burger King
The Keyway Retail Park
Willenhall
WV13 2QU**

1. Summary of Report

- 1.1 The purpose of this report is for the Licensing and Safety Sub-Committee to determine an application for a new premises licence in respect of The Burger King, The Keyway Retail Park, Willenhall, WV13 2QU. The premises is described as a high-quality, great-tasting, and affordable food premises serving hot food and drinks on & off the premises.
- 1.2 The application was made under section 17 of the Licensing Act 2003 and is due to be determined under section 18.
- 1.3 The application was submitted by Poppleston Allen Solicitors on behalf of BKUK Group Ltd (applicant).
- 1.4 During the consultation period the Council received one relevant representation from Walsall Public Health.

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 licence as applied for;
 - grant the licence with modifications or conditions; or
 - refuse the application.

3. Background Information

- 3.1. The application for a premises licence, attached as **Appendix 1**, was received by the licensing authority on 26 November 2024.

3.2. A summary of the licensable activities and times applied for is provided in the table below:

Licensable Activities/ Opening Hours	Days	From	To
Late Night Refreshment (Indoors & Outdoors)	Monday to Sunday (inclusive)	23:00	05:00
Hours open to public	Monday to Sunday (inclusive)	00:00	00:00

3.3. Location plans are attached as **Appendix 2**.

3.4. In accordance with regulations the application was served on all the statutory responsible authorities.

3.5. 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 **24 December 2024**.
- 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.

3.6. 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.

3.7. The blue notice was displayed, and the newspaper notice published in accordance with the requirements of the Licensing Act 2003.

3.8. 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.

4. Representations

4.1 Representations/Responses from Responsible Authorities

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

Walsall Council Trading Standards

On 28 November 2024 Trading Standards confirmed that they had no issues/comments to make in respect of the application. The email response is attached as **Appendix 3**.

West Midlands Police

On 29 November 2024, the Police Licensing Officer confirmed that West Midlands Police had no representations to make to the application. A copy of the mediation email response is attached as **Appendix 4**.

Walsall Council Community Protection (as Noise Pollution)

On the 2 December 2024 Community Protection (Noise Pollution team) a responsible authority, confirmed that they have no comments/concerns regarding the application. A copy of the email is attached as **Appendix 5**.

Walsall Council Public Health

On the 17 December 2024 Public Health Walsall responded to the application informing the Licensing Authority that they are objecting to the grant of the licence. A copy of the email is attached as **Appendix 6**.

Other responsible authorities

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

4.1. Representations from 'other persons'

4.2 No representations received from other Persons

5. Cumulative Impact Policy

5.1. The premises does not fall under a Cumulative Impact Policy.

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

- 6.1. Please click this link to access Walsall Council's Statement of Licensing Policy or copy the URL address into a search bar: [Statement of licensing policy | Walsall Council](#)

7. Resource Considerations

- 7.1. **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.
- 7.2. Any decision taken by the Licensing Authority may be appealed to the Magistrates' Court. The Licensing Authority may have to bear the costs of defending such an appeal.
- 7.3. **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.
- 7.4. At a hearing, the Licensing Authority upon receipt of relevant representations, and only if it is considered to be appropriate and proportionate to promote the licensing objectives. may consider attaching additional conditions, modifying conditions proposed in the operating schedule of the application (including hours), or to reject the application.
- 7.5. Any conditions further imposed by the committee must be appropriate and proportionate 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.
- 7.6. 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 residents.
- 7.7. The Licensing Sub Committee must have due regard to Walsall Council's Statement of Licensing Policy issued in 2021 and the statutory guidance issued under section 182 of the Licensing Act 2003.

8. Relevant Extracts from Section 182 Guidance:

- 8.1 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."
- 8.2 The section 182 guidance 14.19 states - 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.

- 8.3 The section 182 guidance also states - “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.
- 8.4 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.

9. Relevant Representations

- 9.1. 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:

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

9.2. 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.

- 9.3. The Licensing Act 2003 and associated guidance suggests 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 business owner 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. 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.
- 9.4. 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.
- 9.5. 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.

- 9.6. 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.

- 9.7. 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.
- 9.8. 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."

- 9.9. 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.

9.10. 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.

9.11. 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.

9.12. 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.

9.13. 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.

9.14. The Licensing Sub Committee may grant the application as requested, grant with additional/modified conditions attached to the premises licence or reject the application.

9.15. 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.

10.0 **Staffing issues:**

None arising from this report.

11. **Citizen Impact**

11.1 Residents or businesses ('Other Persons') within the licensing authorities' area can submit 'relevant representations'

12. **Community Safety**

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

13. **Environmental Impact**

13.1 Nothing arising from this report.

14. **Performance and Risk Management Issues**

14.1 Nothing arising from this report.

15. **Equality Implications**

15.1 When considering this application and reaching a determination the licensing authority must always have due regard to the Public Sector Equality Duty (PSED) 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.

15.2 The licensing authority's approach to having "due regard" is based on legal principles arising from case law including those set out in *Brown vs. Secretary of State for Work and Pensions* (2008) and other cases. These principles may be summarised as:

- **Knowledge** - decision makers should be aware of their duty to have due regard to the aims of PSED.
- **Sufficient information** - decision makers must consider whether they have sufficient information in order to give proper consideration to the matters set out in the PSED. This will assist decision makers to understand the potential impact of their

proposed decisions on people with relevant protected characteristics.

- **Timeliness** - public bodies must have due regard “before and at the time that a particular decision is being considered.” This means that equality must form part of the decision-making process as it happens and not after the event.
- **Real consideration** - consideration of the aims of the PSED must form an integral part of the decision-making process. The PSED duty must be exercised fully, rigorously and with an open mind.
- **No delegation** - public bodies and others carrying out public functions may use their staff and third parties to assist them to assess the impact of a decision on equality. However, where they make the ultimate decision, they cannot delegate their responsibility to consider the aims of the PSED to another person.
- **Review** - public bodies must have due regard to the aims of the PSED not only when a policy is developed and decided, but also when it is implemented and reviewed. The PSED is a continuing duty.

16. **Consultation**

16.1 Consultation/advertising is carried out in accordance with prescribed statutory regulations.

17. **Associated Papers**

Appendix 1 – Application.

Appendix 2 – Location Plan

Appendix 3 – Response from Trading Standards

Appendix 4 – West Midlands Police Response

Appendix 5 – Response from Community Protection

Appendix 6 – Representation from Public Health

18. **Contact Officer**

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