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## LICENSING SUB-COMMITTEE

Meeting to be held on: **16 July 2021 10.30A.M**

Meeting to be held at: **Walsall Town Hall, Leicester Street, Walsall, WS1 1PT**

Accessible via: <https://www.youtube.com/user/walsallcouncil>

**MEMBERSHIP:** Councillor Cooper  
Councillor Sears  
Councillor Chris Bott

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Democratic Services, The Council House, Lichfield Street, Walsall, WS1 1TW  
Contact Name: **Matt Powis** -Telephone: (01922) **654764** - Fax: (01922) 654301  
[www.walsall.gov.uk](http://www.walsall.gov.uk)

**This meeting will be streamed on YouTube and the link will be on the Councils  
Committee Management Information Website**  
<https://cmispublic.walsall.gov.uk/cmisis/Home.aspx>



# **A G E N D A**

## **PART I - PUBLIC SESSION**

1. Appointment of Chair
2. Welcome
3. Apologies
4. Declarations of Interest
5. Local Government (Access to Information) Act, 1985 (as amended):  
To agree that, where applicable, the public be excluded from the private session during consideration of the agenda items indicated for the reasons shown on the agenda.
6. Application for a premises licence variation under Section 34 of the Licensing Act 2003 in respect of the Emerald Supermarket, 38 Bridge Street, Walsall, WS1 1JG.



## **Schedule 12A to the Local Government Act, 1972 (as amended)**

### **Access to information: Exempt information**

#### **Part 1**

#### **Descriptions of exempt information: England**

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes:
  - (a) to give any enactment a notice under or by virtue of which requirements are imposed on a person; or
  - (b) to make an order or direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
8. Information being disclosed during a meeting of a Scrutiny and Performance Panel when considering flood risk management functions which:
  - (a) Constitutes a trades secret;
  - (b) Its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the risk management authority);
  - (c) It was obtained by a risk management authority from any other person and its disclosure to the public by the risk management authority would constitute a breach of confidence actionable by that other person.



## The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012

### Specified pecuniary interests

The pecuniary interests which are specified for the purposes of Chapter 7 of Part 1 of the Localism Act 2011 are the interests specified in the second column of the following:

Subject	Prescribed description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by a member in carrying out duties as a member, or towards the election expenses of a member.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Regulations (Consolidation) Act 1992.</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority:</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	<p>Any tenancy where (to a member's knowledge):</p> <p>(a) the landlord is the relevant authority;</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where:</p> <p>(a) that body (to a member's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>b) either:</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>



**Information to accompany notice of hearing**

**Rights of a Party**

- Subject to Regulations 14(2) and 25 \*, a party may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified.
- At the hearing, a party shall be entitled to -
  - (a) in response to a point upon which the Authority has given notice to a party that it will want clarification, give further information in support of their application, representations or notice (as applicable);
  - (b) if given permission by the Authority, question any other party; and
  - (c) address the Authority.

(\* Regulation 14(2) states “The Licensing Authority may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public.” Regulation 25 states “The Authority may require any person attending the hearing who, in their opinion, is behaving in a disruptive manner to leave the hearing and may -

- (a) refuse to permit that person to return; or
- (b) permit him to return only on such conditions as the Authority may specify.

but such person may, before the end of the hearing, submit to the Authority in writing any information which they would have been entitled to give orally had they not been required to leave”).

**Non-attendance of a party at the hearing**

- (1) If a party has informed the Authority that he does not intend to attend or be represented at a hearing, the hearing may proceed in his absence.
- (2) If a party who has not so indicated, fails to attend or be represented at a hearing, the Authority may -
  - (a) where it considers it to be necessary in the public interest, adjourn the hearing to a specified date; or
  - (b) hold the hearing in the party’s absence.

- (3) Where the Authority holds the hearing in the absence of a party, the Authority shall consider at the hearing the application, representations or notice made by that party.
- (4) Where the Authority adjourns the hearing to a specified date, it must forthwith notify the parties of the date, time and place to which the hearing has been adjourned.

### **Procedure to be followed at the hearing**

- At the beginning of the hearing, the Authority shall explain to the parties the procedure that will be followed and shall consider any request by a party for permission for another person to appear at the hearing.
- The hearing will usually be conducted in public, although the Sub-Committee may exclude the public from all or part of a hearing where it is considered expedient.
- The hearing will take the form of a discussion led by the Authority and cross-examination will not normally be permitted unless the Authority considers that cross-examination is required for it to consider the representations, application, or notice, as the case may require.
- The hearing will proceed as follows:-
  1. The Chair to open the meeting, introducing Members and officers to all parties, members of the public, explain the nature of the application and the procedure to be followed.
  2. The applicant or their representative; relevant Authorities or their representatives; objectors or their representative to introduce themselves to the Sub-Committee.
  3. The Chair to ensure everyone has a full copy of documents for the hearing and to deal with any preliminary issues that may affect the hearing, for example, an application for an adjournment to consider fresh or late evidence.
  4. The Licensing Officer to tender a report to the Sub-Committee, outlining the application, any relevant representations and relevancies to the Local Authority licensing policy statement and statutory guidance.
  5. The Sub-Committee or other parties to seek points of clarification from the Licensing Officer on his report, if necessary.
  6. The responsible Authorities, or their representatives, to make relevant representations in relation to the application.
  7. The applicant and other interested parties to ask questions of the responsible Authorities in relation to their representations.
  8. Sub-Committee Members to ask relevant questions of the responsible Authorities in relation to their representations.
  9. Interested parties to be invited, if they wish to, to make relevant representations to the Sub-Committee.
  10. The applicant or person representing them to ask questions of the interested parties in relation to their representations.

11. Sub-Committee Members to ask relevant questions of the interested parties in relation to their representations.
12. The applicant, or their representative, to present their case to the Sub-Committee.
13. The responsible Authorities, or their representatives, to ask questions of the applicant.
14. The interested parties, or their representative, to ask questions of the applicant.
15. The Sub-Committee to ask questions of the applicant.
16. The Chair to invite any parties making representations, and the applicant, to briefly summarise their case, if they wish.
17. The Chair will check that the parties have said all that they wish to.
18. The Sub-Committee will then decide on the matter in private and all persons, except the legal advisor and the Committee administrator, will withdraw from the hearing.
19. All the parties will then be recalled and the decision of the Sub-Committee will be delivered, including any conditions placed on the licence (if granted) and the licensing objective that they relate to.

### **Determinations**

- In most cases, the Sub-Committee will make a determination at the conclusion of the hearing. In all cases, the determination will be in writing, giving reasons for the decision.
- The Sub-Committee will consider its final decision in private, accompanied by the Legal Officer and the Committee Clerk. Any legal advice given to Members of the Sub-Committee will be repeated by the Legal Officer to the parties when the decision is announced publicly.

**Action following receipt of notice of hearing**

- (1) A party shall give to the Authority, within the period of time provided for in the following provisions of this Regulation, a notice stating -
  - (a) whether he intends to attend or be represented at the hearing;
  - (b) whether he considers a hearing to be unnecessary.
- (2) In a case where a party wishes any other person (other than the person he intends to represent him at the hearing) to appear at the hearing, the notice referred to in Paragraph (1) shall contain a request for permission for such other person to appear at the hearing accompanied by details of the name of that person and a brief description of the point or points on which that person may be able to assist the Authority in relation to the application, representations or notice of the party making the request.
- (3) In the case of a hearing under -
  - (a) Section 48(3)(a) (cancellation of interim authority notice following police objection); or
  - (b) Section 105(2)(a) (counter notice following police objection to temporary event notice),

the party shall give the notice no later than one working day before the day or the first day on which the hearing is to be held.
- (4) In the case of a hearing under -
  - (a) Section 167(5)(a) (review of Premises Licence following Closure Order);
  - (b) Paragraph 4(3)(a) of Schedule 8 (determination of application for conversion of existing licence);
  - (c) Paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing Club Certificate); or
  - (d) Paragraph 26(3)(a) of Schedule 8 (determination of application by holder of Justices Licence for grant of Personal Licence),

the party shall give the notice no later than two working days before the day or the first day on which the hearing is to be held.
- (5) In any other case, the party shall give the notice no later than five working days before the day or the first day on which the hearing is to be held.

### **Right to dispense with hearing if all parties agree**

- (1) An Authority may dispense with holding a hearing if all persons required by the Act to agree that such a hearing is unnecessary, other than the Authority itself, have done so by giving notice to the Authority that they consider a hearing to be unnecessary.
- (2) Where all the persons required by the Act to agree that a hearing is unnecessary have done so in accordance with Paragraph (1), the Authority, if it agrees that a hearing is unnecessary, must forthwith give notice to the parties that the hearing has been dispensed with.

### **Withdrawal of representations**

A party who wishes to withdraw any representations they have made may do so -

- (a) by giving notice to the Authority no later than 24 hours before the day or the first day on which the hearing is to be held; or
- (b) orally at the hearing.

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**LICENSING SUB-COMMITTEE**  
**ORDER OF PROCEEDINGS**

1. Introductions.
2. Licensing Officer to present report outlining the application, relevant representations and relevance to the Local Authority licensing policy statement and statutory guidance.
3. Questions to the Licensing Officer from the Sub-Committee or other parties.
4. The responsible Authorities to make relevant representations in relation to the application.
5. The applicant, interested parties and Sub-Committee to ask questions of the responsible Authorities.
6. Interested parties to make representations.
7. The applicant, responsible Authorities and Sub-Committee to ask questions of the interested parties.
8. The applicant to present their case.
9. Responsible Authorities, interested parties and Sub-Committee to ask questions of the applicant.
10. All parties to briefly summarise their case.
11. The Chair to check that all parties have said all they wish to.
12. The Sub-Committee to deliberate in private, all persons except the Legal Adviser and Committee Administrator, to withdraw from the hearing.
13. All parties to be recalled and advised of the Sub-Committee's decision and inform parties in regard to the right of appeal to the Magistrates Court under Section 181 of the Licensing Act 2003

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# Appointment of Chair

# Welcome

# Apologies

# Declarations of Interest

Local Government  
(Access to  
Information) Act, 1985  
(as amended)

## Agenda Item 6

**Emerald Supermarket,  
38 Bridge Street,  
Walsall, WS1 1JG.**



# **Walsall Council**

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## **REPORT OF THE DIRECTOR OF RESILIENT COMMUNITIES**

### **LICENSING SUB - COMMITTEE**

**16 July 2021**

## **APPLICATION FOR A PREMISES LICENCE VARIATION UNDER**

### **SECTION 34 OF THE LICENSING ACT 2003**

**The Emerald Supermarket  
38 Bridge Street  
Walsall  
WS1 1JG**

#### **1.0 Summary of Report**

- 1.1 For members of the licensing sub-committee to determine an application for a premises licence variation in respect of The Emerald Supermarket, 38 Bridge Street, Walsall, WS1 1JG. The application has been made by the premises licence holder, Indrajith Yohan Kumara Hawa Hakuru.
- 1.2 The application cannot be granted or refused under officer's delegated authority.

#### **2.0 Recommendations**

- 2.1 Members are to consider whether the representation received from 'Other Persons' is a valid representation.
- 2.2 That the licensing sub-committee determine whether the application for a premises licence variation in respect of The Emerald Supermarket, 38 Bridge Street, Walsall, WS1 1JG be granted as requested, granted with additional/modified conditions, or reject the application.

#### **3.0 Background Information**

- 3.1 The current premises licence was granted on the 24<sup>th</sup> November 2005. The current premises licence is given as **Appendix 1**.
- 3.2 The premises licence was transferred over to Mr Hawa on the 13<sup>th</sup> January 2021.

3.3 The application for a premises licence variation was received on 21 May 2021 by the licensing authority.

3.4 The variation application is given as **Appendix 2**.

3.5 A summary of the proposed activities and times are as follows:

Licensable Activities	Proposed extended times
Supply of alcohol (Off sales only)	Monday – Wednesday 08:00 – 23:00 Thursday – Sunday 08:00 – 04:00
Late Night Refreshment	Thursday – Sunday 23:00 – 04:00

3.5 In essence the primary purpose of this application seeks to extend the hours of alcohol sales by extending terminal hours and requested for Late Night Refreshment to be added on as a licensable activity.

3.6 A street map of the locality is attached as **Appendix 3**.

3.7 Copies of the licence variation application must be submitted to all statutory 'responsible authorities' under the terms of the Act.

3.8 Applications for a premises licence variation are also required to be advertised by way of a blue site notice displayed at the premises, and a licensing notice placed in a newspaper circulating within the area. This ensures that 'other persons' (regardless of their geographic proximity to the premises) under the terms of the Act are aware of the licence application. The Licensing Authority must also advertise the application on its website during the consultation period.

3.9 Any responsible authority or other persons has 28 days from submission of the application to make a written relevant representation to the licensing authority.

#### **4.0 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 2 June 2021 the Community Protection Team confirmed that after reviewing the application they have no comments/objections to make to the application. A copy is attached as **Appendix 4**.

#### West Midlands Police

On the 8 June 2021, West Midlands Police mediated conditions with the applicants. As part of the mediation, the applicant agreed to remove Late Night Refreshment from the licensable activities as well as reducing the opening hours of the premises to:

**Sunday to Wednesday 08:00 – 23:00**

**Thursday to Saturday 08:00 – 02:30.**

A copy of the agreed conditions and mediation as attached as

**Appendix 5.**

#### Walsall Council Children Services

On the 11 June 2021, Children Services responded to the application by saying that they do not hold any information therefore they have no comment or reason to object to the application. A copy of the email is attached as **Appendix 6.**

#### Walsall Council Planning Service

On the 18 June 2021, Planning Services responded by saying they have no comments to the application. A copy of the email is attached as **Appendix 7.**

## **4.2 Representations from ‘Other Persons’**

On the 18 June 2021, the licensing authority were in receipt of 2 representations from ‘Other Person’ on the grounds of Crime & Disorder. Copies of the representations are attached as **Appendix 8.**

## **5.0 Cumulative Impact Policy**

- 5.1 The premises falls within the council’s cumulative impact area. However, the premises falls outside for the criteria of the CIP as they **sell alcohol for consumption off the premises.** **Appendix 9** is a link to the councils statement of licensing policy. Page 16 of the policy refers to the current CIP policy.

## **6.0 Resource Considerations**

- 6.1 **Financial:** 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.
- 6.2 **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.

- 6.3 Statutory guidance issued under section 182 of the Licensing Act 2003 states in part that 'For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation'.
- 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 required for that purpose.

## **7.0 Section 182 Guidance**

- 7.1 Paragraph 10:15 of section 182 guidance states:

*"Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours"*

- 7.2 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.
- 7.3 8.44: 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.
- 7.4 8.47: 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.
- 7.5 It should be noted, however, that the Licensing Act 2003 is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and therefore, beyond the direct control of the business

holding the licence. Any imposed condition should be focused on measures within the direct control of the licence holder.

## **8.0 Relevant Representations**

8.1 In determining whether a representations 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 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.
- 8.7 The Licensing Sub Committee must have due regard to the statute, its statement of licensing policy, and the statutory guidance issued under section 182 of the Licensing Act 2003.
- 8.8 The Licensing Sub Committee may grant the application as requested, grant with additional/modified conditions attached to the premises licence or reject the application.
- 8.9 Where the applicant, responsible authority, or other person is aggrieved by the decision of the Licensing Authority, appeal is to Magistrates Court where the reasonableness or otherwise of the decision will be tested.
- 8.10 **Staffing:** Nothing arising from this report

## **9.0 Citizen Impact**

- 9.1 Nothing arising from this report.

## **10.0 Community Safety**

- 10.1 Is determined as part of the hearing process.

## **11.0 Environmental Impact**

- 11.1 Nothing arising from this report.

## **12.0 Performance and risk management issues**

- 12.1 Nothing arising from this report.

## **13.0 Equality implications**

- 13.1 Nothing arising from this report.

## **14.0 Consultation**

14.1 As prescribed by regulation.

**15.0 Associated Papers**

- 15.1 Appendix 1 – Current premises licence.  
Appendix 2 – Variation Application.  
Appendix 3 – Street map of the locality.  
Appendix 4 – Response from Community Protection.  
Appendix 5 – West Midlands Police Mediation.  
Appendix 6 – Response from Children Services.  
Appendix 7 – Response from Planning Service.  
Appendix 8 – Representations from ‘Other Persons’.  
Appendix 9 – Link to Statement of Licensing Policy.  
Appendix 10 – Case Law

**16.0 Contact Officer**

Sayful Alom - [sayful.alom@walsall.gov.uk](mailto:sayful.alom@walsall.gov.uk)

## Appendix 1

# Current Premises Licence

**Licensing Act 2003 Premises Licence Number: WS/PRL/0366**

(Walsall Council reference WK/202100762)

**Part 1 – Premises details**

**Postal address of premises, or if none, ordnance survey map reference or description**

The Emerald Supermarket  
38 Bridge Street  
Walsall  
West Midlands  
WS1 1JG

**Telephone number of premises**

**Where the licence is time limited the dates**

The licence is not time limited

**Subject to the conditions set out in this licence and its annexes, the following licensable activities are licensed:**

Alcohol Sales for consumption off the premises

**The times the licence authorises the carrying out of licensable activities**

Alcohol Sales

Monday to Saturday      08:00 – 23:00  
Sunday                      10:00 – 22:30

Plus non-standard times detailed in operating schedule (Annex 2)

**The opening hours of the premises**

This is a “conversion” from a Licence under a previous licensing regime whereby premises opening hours were not stipulated.

**Where the licence authorises supplies of alcohol whether these are on and/or off supplies**

Only “Off”

**Part 2 – Details of Licence Holder****Name, (registered) address, telephone number and e-mail (where relevant) of holder of premises licence**

Mr Indraith Hawa Hakuru  
Lower Foster Street  
Walsall  
West Midlands  
WS1 1XA

**Registered number of holder, for example company number, charity number (where applicable)**

Not applicable

**Part 3 – Details of Designated Premises Supervisor****Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol**

Mr Ram Rattan Gurdip Chandarh  
Park Hall Road  
Walsall  
West Midlands  
WS5 3HL



**Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises the supply of alcohol**

Personal Licence Number – WS/PEL/2543  
Licensing Authority – Walsall Metropolitan Borough Council

**Part 4 – Licence approval**

**Approved on behalf of Walsall Metropolitan Borough Council**



David Elrington  
Regulatory Services Manager

Effective from: 15 January 2021      (*Original Issue Date: 24 November 2005*)

## **Annex 1 - Mandatory conditions**

### **The following conditions apply where relevant:**

#### **Conditions that apply to the sale of Alcohol:**

No supply of alcohol may be made under this licence;

- (a) At a time when there is no Designated Premises Supervisor in respect of this licence, or
- (b) at a time when the Designated Premises Supervisor does not hold a personal Licence or his/her personal licence is suspended

Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.

#### **Conditions that apply to Security:**

Each individual at the premises in order to carry out security activity must be licensed by the Security Industry Authority (SIA).

#### **Conditions that apply to the exhibition of films:**

Where a film classification body has specified that the exhibition of a film is restricted, the admission of children to the film must be restricted in accordance with the recommendations of that body.

### **Mandatory Licensing Conditions (Amendment) Order 2014**

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).
- 2. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
- 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.
- 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 Licensing Conditions Order 2014**

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. In this condition:—

(a) “permitted price” is the price found by applying the formula

$$P = D + (D \times V), \text{ where—}$$

- (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;
- (b) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
- (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
  - (ii) 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 would not be a whole number of pennies, the permitted price shall be taken to be the price rounded up to the nearest penny.
4. Where the permitted price 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, 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.

## Annex 2 - Conditions consistent with the Operating Schedule

Alcohol Sales Off the Premises			
Day	Start	Finish	Plus non-standard times
Mon	08.00	23.00	Good Friday 08.00 - 22.30
			Christmas Day 12.00 - 15.00
Tues	08.00	23.00	19.00 - 22.30
Wed	08.00	23.00	
Thurs	08.00	23.00	
Fri	08.00	23.00	
Sat	08.00	23.00	
Sun	10.00	22.30	

The following adult entertainment or services, activities or other matters ancillary to the use of the premises that might give rise to concern in respect of children have been highlighted by the applicant:

None

Conditions volunteered by the applicant in order to promote the licensing objectives:

**(a) General – all four licensing objectives**

None

**(b) The prevention of crime and disorder**

None

**(c) Public safety**

None

**(d) The prevention of public nuisance**

None

**(e) The protection of children from harm**

None

**Annex 3 - Conditions agreed by the applicant following mediation**

None

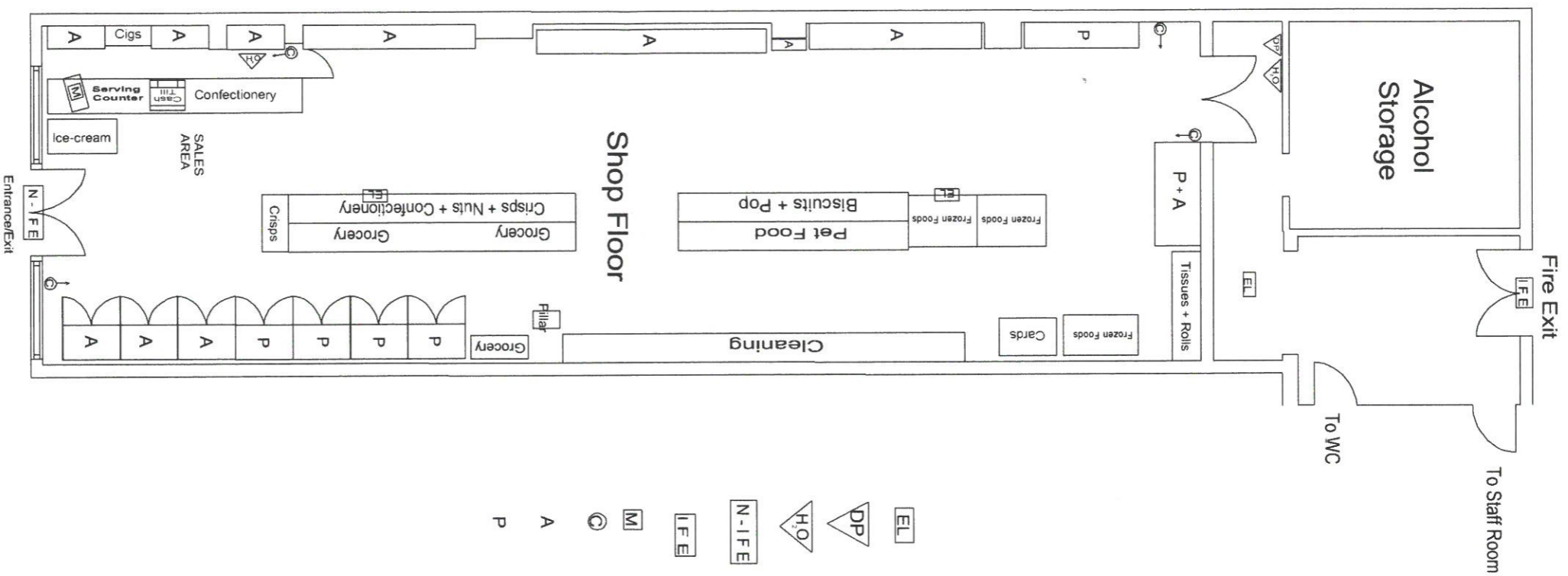
**Annex 4 - Conditions attached after a hearing by the licensing authority**

Not applicable - this application was not subject to a hearing.

**Annex 5 – Plans**

Plans detailing those aspects of the premises covered by this Licence form part of this Licence and are attached.

**End of annexes**



- Emergency Lighting
- Fire Extinguisher - Dry powder
- Fire Extinguisher - Water
- Non Illuminated Exit sign above door
- Illuminated Exit sign above door
- Monitor to CCTV
- Cameras
- Alcohol
- Pop/Soft Drinks

## Existing Internal Ground Floor Layout

Bridge Street

Scale 1:100

RECEIVED  
11 2 AUG 2005

Application:  
*For an existing licence to be converted to a premises licence under licensing act 2003.*

Client: Karan Kumari Date: 21st June 2005  
Site: Shubh Wine & Food Store Scale: 1:100  
38 Bridge Street  
Walsall  
WS1 1JG  
Drawn By: K. S. Sidhu  
Dwg No: GT45

### GT DESIGNS

*Building Designs & Technical services*

West Midlands House  
Gipsy Lane  
Willeshall  
WV13 2HA  
Tel/Fax: 01902 482544 Mob: 07977134824  
Email: gtdesigns@hotmail.com

## Appendix 2

# Variation Application



# Walsall Council

## Application to vary a premises licence under the Licensing Act 2003

### PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I INDRAJITH YOHAN KUMARA HAWA HAKURU

*(Insert name(s) of applicant)*

**being the premises licence holder, apply to vary a premises licence under section 34 of the Licensing Act 2003 for the premises described in Part 1 below**

#### Premises licence number

WS/PRL/0366

#### Part 1 – Premises Details

Postal address of premises or, if none, ordnance survey map reference or description

The Emerald Supermarket  
38 Bridge Street  
Walsall  
West Midlands

Post town | Walsall

Postcode | WS1 1JG

Telephone number at premises (if any)



Non-domestic rateable value of premises

£15,750

## Part 2 – Applicant details

Daytime contact telephone number			
E-mail address (optional)			
Current postal address if different from premises address	Lower Foster Street Walsall West Midlands		
Post town	Walsall	Postcode	WS1 1XA

## Part 3 - Variation

Please tick as appropriate

Do you want the proposed variation to have effect as soon as possible? ☒ YES

If not, from what date do you want the variation to take effect?

DD	MM	YYYY

Do you want the proposed variation to have effect in relation to the introduction of the late night levy? (Please see guidance note 1) ☐ Yes ☐ No

**Please describe briefly the nature of the proposed variation** (Please see guidance note 2)

The current alcohol sale time is Monday to Saturday between 08.00am to 11.00pm and Sundays between 10.00am to 10.30pm.

I wish to extend the sale of alcohol at the said premises from Thursday to Sunday 11.00pm to 04.00am the following day.

If your proposed variation would mean that 5,000 or more people are expected to attend the premises at any one time, please state the number expected to attend:

N/A

## Part 4 Operating Schedule

Please complete those parts of the Operating Schedule below which would be subject to change if this application to vary is successful.

### **Provision of regulated entertainment (Please see guidance note 3)**

**Please tick all that apply**

- a) plays (if ticking yes, fill in box A) ☐
- b) films (if ticking yes, fill in box B) ☐
- c) indoor sporting events (if ticking yes, fill in box C) ☐
- d) boxing or wrestling entertainment (if ticking yes, fill in box D) ☐
- e) live music (if ticking yes, fill in box E) ☐
- f) recorded music (if ticking yes, fill in box F) ☐
- g) performances of dance (if ticking yes, fill in box G) ☐
- h) anything of a similar description to that falling within (e), (f) or (g) (if ticking yes, fill in box H) ☐

**Provision of late night refreshment** (if ticking yes, fill in box I) ☒

**Supply of alcohol** (if ticking yes, fill in box J) ☒

**In all cases complete boxes K, L and M**

A

Plays Standard days and timings (please read guidance note 8)			<u>Will the performance of a play take place indoors or outdoors or both – please tick</u> (please read guidance note 4)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 5)		
Mon					
Tue			<u>Please give further details here</u> (please read guidance note 5)		
Wed			<u>State any seasonal variations for performing plays</u> (please read guidance note 6)		
Thur			<u>State any seasonal variations for performing plays</u> (please read guidance note 6)		
Fri			<u>Non standard timings. Where you intend to use the premises for the performance of plays at different times to those listed in the column on the left, please list</u> (please read guidance note 7)		
Sat			<u>Non standard timings. Where you intend to use the premises for the performance of plays at different times to those listed in the column on the left, please list</u> (please read guidance note 7)		
Sun			<u>Non standard timings. Where you intend to use the premises for the performance of plays at different times to those listed in the column on the left, please list</u> (please read guidance note 7)		

B

Films Standard days and timings (please read guidance note 8)			<u>Will the exhibition of films take place indoors or outdoors or both – please tick</u> (please read guidance note 4)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 5)		
Mon					
Tue					
Wed			<u>State any seasonal variations for the exhibition of films</u> (please read guidance note 6)		
Thur					
Fri			<u>Non standard timings. Where you intend to use the premises for the exhibition of films at different times to those listed in the column on the left, please list</u> (please read guidance note 7)		
Sat					
Sun					

C

Indoor sporting events Standard days and timings (please read guidance note 8)			<u>Please give further details</u> (please read guidance note 5)
Day	Start	Finish	
Mon			
Tue			<u>State any seasonal variations for indoor sporting events</u> (please read guidance note 6)
Wed			
Thur			
Fri			<u>Non standard timings. Where you intend to use the premises for indoor sporting events at different times to those listed in the column on the left, please list</u> (please read guidance note 7)
Sat			
Sun			

D

Boxing or wrestling entertainments Standard days and timings (please read guidance note 8)			<u>Will the boxing or wrestling entertainment take place indoors or outdoors or both – please tick</u> (please read guidance note 4)		Indoors	<input type="checkbox"/>
					Outdoors	<input type="checkbox"/>
					Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 5)			
Mon						
Tue						
			<u>State any seasonal variations for boxing or wrestling entertainment</u> (please read guidance note 6)			
Wed						
Thur						
			<u>Non standard timings. Where you intend to use the premises for boxing or wrestling entertainment at different times to those listed in the column on the left, please list</u> (please read guidance note 7)			
Fri						
Sat						
Sun						

E

Live music Standard days and timings (please read guidance note 8)			<u>Will the performance of live music take place indoors or outdoors or both – please tick</u> (please read guidance note 4)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 5)		
Mon					
Tue					
Wed			<u>State any seasonal variations for the performance of live music</u> (please read guidance note 6)		
Thur					
Fri			<u>Non standard timings. Where you intend to use the premises for the performance of live music at different times to those listed in the column on the left, please list</u> (please read guidance note 7)		
Sat					
Sun					

F

Recorded music Standard days and timings (please read guidance note 8)			<u>Will the playing of recorded music take place indoors or outdoors or both – please tick</u> (please read guidance note 4)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish			
Mon			<u>Please give further details here</u> (please read guidance note 5)		
Tue					
Wed			<u>State any seasonal variations for the playing of recorded music</u> (please read guidance note 6)		
Thur					
Fri			<u>Non standard timings. Where you intend to use the premises for the playing of recorded music at different times to those listed in the column on the left, please list</u> (please read guidance note 7)		
Sat					
Sun					

G

<b>Performances of dance</b> Standard days and timings (please read guidance note 8)			<b><u>Will the performance of dance take place indoors or outdoors or both – please tick</u></b> (please read guidance note 4)		Indoors	<input type="checkbox"/>
					Outdoors	<input type="checkbox"/>
					Both	<input type="checkbox"/>
Day	Start	Finish	<b><u>Please give further details here</u></b> (please read guidance note 5)			
Mon						
Tue						
			<b><u>State any seasonal variations for the performance of dance</u></b> (please read guidance note 6)			
Wed						
Thur						
			<b><u>Non standard timings. Where you intend to use the premises for the performance of dance at different times to those listed in the column on the left, please list</u></b> (please read guidance note 7)			
Fri						
Sat						
Sun						

H

<b>Anything of a similar description to that falling within (e), (f) or (g)</b> Standard days and timings (please read guidance note 8)			Please give a description of the type of entertainment you will be providing		
Day	Start	Finish	<b><u>Will this entertainment take place indoors or outdoors or both – please tick</u></b> (please read guidance note 4)	Indoors	<input type="checkbox"/>
Mon				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Tue			<b><u>Please give further details here</u></b> (please read guidance note 5)		
Wed					
Thur			<b><u>State any seasonal variations for entertainment of a similar description to that falling within (e), (f) or (g)</u></b> (please read guidance note 6)		
Fri					
Sat			<b><u>Non standard timings. Where you intend to use the premises for the entertainment of a similar description to that falling within (e), (f) or (g) at different times to those listed in the column on the left, please list</u></b> (please read guidance note 7)		
Sun					

<b>Late night refreshment</b> Standard days and timings (please read guidance note 8)			<b><u>Will the provision of late night refreshment take place indoors or outdoors or both – please tick</u></b> (please read guidance note 4)	Indoors	<input checked="" type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<b><u>Please give further details here</u></b> (please read guidance note 5)		
Mon					
Tue					
Wed					
Thur	23.00 am	04.00 am	<b><u>State any seasonal variations for the provision of late night refreshment</u></b> (please read guidance note 6)		
Fri	23.00 am	04.00 am			
Sat	23.00 am	04.00 am			
Sun	23.00 am	04.00 am	<b><u>Non standard timings. Where you intend to use the premises for the provision of late night refreshment at different times, to those listed in the column on the left, please list</u></b> (please read guidance note 7)		

J

<b>Supply of alcohol</b> Standard days and timings (please read guidance note 8)			<b>Will the supply of alcohol be for consumption – please tick</b> (please read guidance note 9)	On the premises	<input type="checkbox"/>
				Off the premises	<input checked="" type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<b><u>State any seasonal variations for the supply of alcohol</u></b> (please read guidance note 6) I wish people to be able to purchase alcohol to consume away from the premises.		
Mon	08.00	23.00			
Tue	08.00	23.00			
Wed	08.00	23.00			
Thur	08.00 am	04.00 am	<b><u>Non-standard timings. Where you intend to use the premises for the supply of alcohol at different times to those listed in the column on the left, please list</u></b> (please read guidance note 7) N/A		
Fri	08.00 am	04.00 am			
Sat	08.00 am	04.00 am			
Sun	08.00 am	04.00 am			

K

**Please highlight any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children** (please read guidance note 10).

N/A

L

<b>Hours premises are open to the public</b> Standard days and timings (please read guidance note 8)			<b><u>State any seasonal variations</u></b> (please read guidance note 6)
Day	Start	Finish	
Mon	08.00	23.00	
Tue	08.00	23.00	<b><u>Non standard timings. Where you intend the premises to be open to the public at different times from those listed in the column on the left, please list</u></b> (please read guidance note 7)
Wed	08.00	23.00	
Thur	08.00 am	04.00 am	
Fri	08.00 am	04.00 am	
Sat	08.00 am	04.00 am	
Sun	10.00 am	04.00 am	

Please identify those conditions currently imposed on the licence which you believe could be removed as a consequence of the proposed variation you are seeking.

The current license Annex 2 – conditions consistent with the Operating Schedule to be varied. Sale of alcohol at the premises to be varied from Thursday to Sunday 08.00 am to 04.00 am the following day.

Please tick as appropriate

- I have enclosed the premises licence ☒
- I have enclosed the relevant part of the premises licence ☒

If you have not ticked one of these boxes, please fill in reasons for not including the licence or part of it below:

Reasons why I have not enclosed the premises licence or relevant part of premises licence.

## M

Describe any additional steps you intend to take to promote the four licensing objectives as a result of the proposed variation:

**a) General – all four licensing objectives (b, c, d and e) (please read guidance note 11)**

I do not wish to alter the conditions

**b) The prevention of crime and disorder**

I do not wish to alter the conditions

**c) Public safety**

I do not wish to alter the conditions

**d) The prevention of public nuisance**

I do not wish to alter the conditions

**e) The protection of children from harm**

I do not wish to alter the conditions

Checklist:

**Please tick to indicate agreement**

- I have made or enclosed payment of the fee; or ☒
- I have not made or enclosed payment of the fee because this application has been made in relation to the introduction of the late night levy. ☐
- I have sent copies of this application and the plan to responsible authorities and others where applicable. ☐
- I understand that I must now advertise my application. ☒
- I have enclosed the premises licence or relevant part of it or explanation. ☒
- I understand that if I do not comply with the above requirements my application will be rejected. ☒

**IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.**

**Part 5 – Signatures** (please read guidance note 12)

**Signature of applicant (the current premises licence holder) or applicant's solicitor or other duly authorised agent** (please read guidance note 13). **If signing on behalf of the applicant, please state in what capacity.**

Signature	INDRAJITH YOHAN KUMARA HAWA HAKURU
Date	18 May 2021
Capacity	Business Owner

**Where the premises licence is jointly held, signature of 2nd applicant (the current premises licence holder) or 2nd applicant's solicitor or other authorised agent** (please read guidance note 14). **If signing on behalf of the applicant, please state in what capacity.**

Signature	
Date	
Capacity	

**Contact name (where not previously given) and address for correspondence associated with this application** (please read guidance note 15)

<b>Post town</b>		<b>Post code</b>	
<b>Telephone number (if any)</b>			
<b>If you would prefer us to correspond with you by e-mail, your e-mail address (optional)</b>			

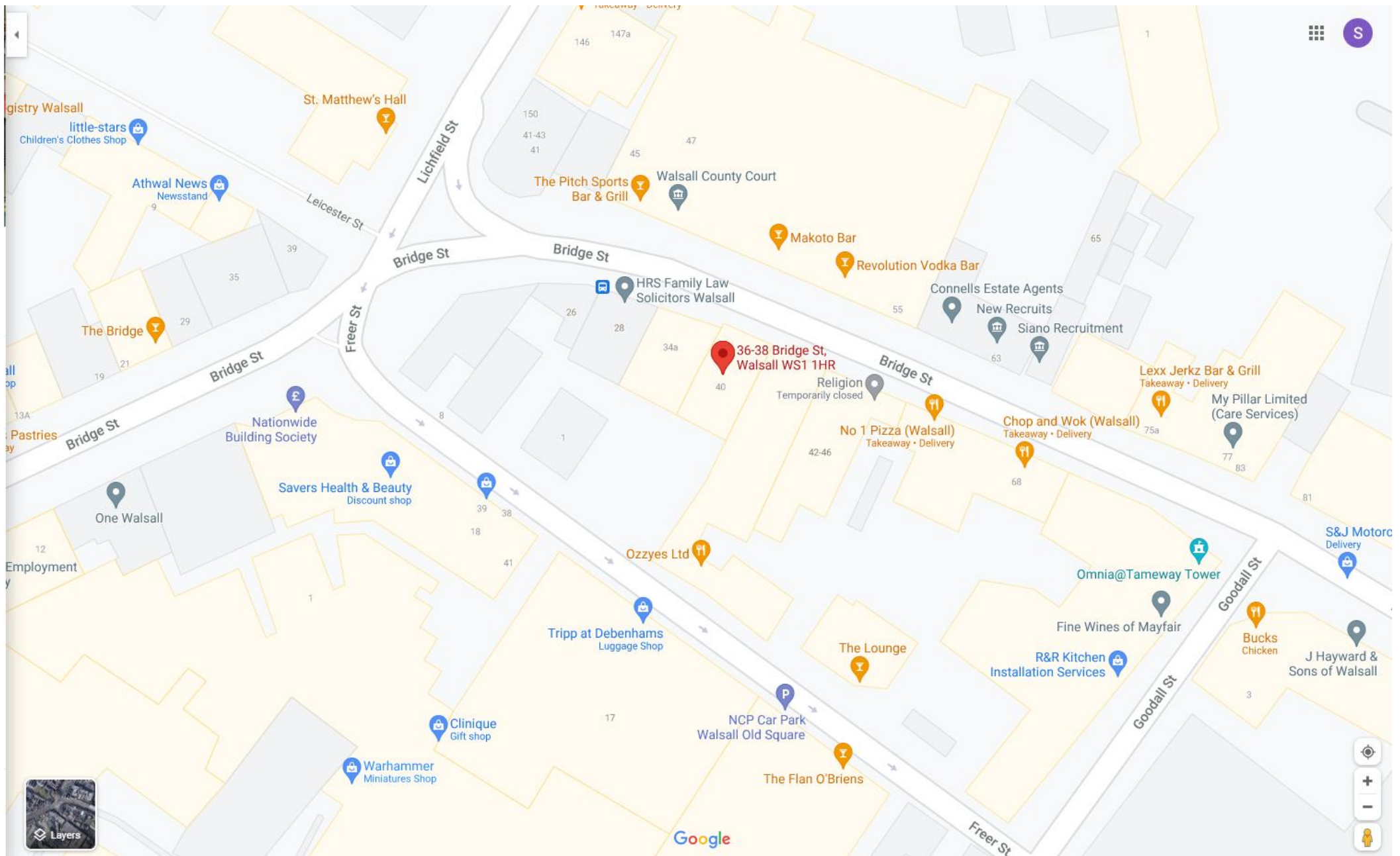
## Notes for Guidance

**This application cannot be used to vary the licence so as to extend the period for which the licence has effect or to vary substantially the premises to which it relates. If you wish to make that type of change to the premises licence, you should make a new premises licence application under section 17 of the Licensing Act 2003.**

1. You do not have to pay a fee if the only purpose of the variation for which you are applying is to avoid becoming liable for the late night levy
2. Describe the premises. For example, the type of premises, its general situation and layout and any other information which could be relevant to the licensing objectives. Where your application includes off-supplies of alcohol and you intend to provide a place of consumption of these off-supplies of alcohol, you must include a description of where the place will be and its proximity to the premises.
3. In terms of specific regulated entertainments please note that:
  - Plays: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 500.
  - Films: no licence is required for 'not-for-profit' film exhibition held in community premises between 08.00 and 23.00 on any day provided that the audience does not exceed 500 and the organiser (a) gets consent to the screening from a person who is responsible for the premises; and (b) ensures that each such screening abides by age classification ratings.
  - Indoor sporting events: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 1000.
  - Boxing or Wrestling Entertainment: no licence is required for a contest, exhibition or display of Greco-Roman wrestling, or freestyle wrestling between 08.00 and 23.00 on any day, provided that the audience does not exceed 1000. Combined fighting sports – defined as a contest, exhibition or display which combines boxing or wrestling with one or more martial arts – are licensable as a boxing or wrestling entertainment rather than an indoor sporting event.
  - Live music: no licence permission is required for:
    - a performance of unamplified live music between 08.00 and 23.00 on any day, on any premises.
    - a performance of amplified live music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.
    - a performance of amplified live music between 08.00 and 23.00 on any day, in a workplace that is not licensed to sell alcohol on those premises, provided that the audience does not exceed 500.
    - a performance of amplified live music between 08.00 and 23.00 on any day, in a church hall, village hall, community hall, or other similar community premises, that is not licensed by a premises licence to sell alcohol, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance from a person who is responsible for the premises.

## Appendix 3

# Street Map of Locality



## Appendix 4

# Response from Community Protection

## Reba Danson

---

**From:** Sarah Heath  
**Sent:** 02 June 2021 12:41  
**To:** Licensing  
**Subject:** RE: CONSULTATION - 38 Bridge Street, Walsall, WS1 1JG

hi

After reviewing our records there are no comments/objections in relation to this application from community protection.

Regards

Sarah

Sarah Heath-Marshall

Please note that all advice given is correct at the point of this email being sent, in line with government guidelines at this time. It is the recipient's responsibility to keep up to date with the changing guidelines surrounding Covid-19. Up to date advice can be found at [www.gov.uk/coronavirus](http://www.gov.uk/coronavirus) and [https://go.walsall.gov.uk/covid-19\\_information](https://go.walsall.gov.uk/covid-19_information) Alternatively you can contact us on the below phone number and email address

Community Protection Officer  
Community ProtectionTeam  
Walsall Council  
2nd floor Zone 2H Civic centre  
Darwall Street  
Walsall  
WS1 1TP



Website: [www.walsall.gov.uk](http://www.walsall.gov.uk)

*For the latest information regarding COVID-19 including service disruptions and how to get help visit [https://go.walsall.gov.uk/covid-19\\_information](https://go.walsall.gov.uk/covid-19_information)*

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## Appendix 5

# West Midlands Police Mediation

## Reba Danson

---

**From:** Jennifer Mellor [redacted]  
**Sent:** 08 June 2021 17:05  
**To:** Licensing  
**Subject:** FW: [External]: Re: Emerald Supermarket Application  
**Attachments:** Emerald Supermarket.doc

**CAUTION: This email originated from outside of the council. If you have any doubts do not click links or open attachments. You should never be asked to enter your username and password into an external link.**

Further to receipt of an application to vary the premise licence at Emerald Supermarket on Bridge Street, Walsall, I have now completed my enquires and have agreed new conditions with the applicant as the extension of hours will have an impact on the licensing objectives. Please also note late night refreshment has been removed from the application.

West Midlands Police have no representations to make subject to the attached agreed conditions being added to the premise licence and the removal of late night refreshment should the variation be granted.

Kind regards

Jennifer

Jennifer Mellor  
Walsall Licensing and Regulatory Services Officer  
Walsall Partnership Team  
Walsall Police  
Civic Centre, Walsall

[redacted]

**Sign-up** for neighbourhood policing alerts at [www.wmnow.co.uk](http://www.wmnow.co.uk)

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[www.youtube.com/westmidlandspolice](https://www.youtube.com/westmidlandspolice)

---

**From:** [redacted]  
**Sent:** 01 June 2021 13:20  
**To:** Jennifer Mellor [redacted]  
**Subject:** [External]: Re: Emerald Supermarket Application

**CAUTION:** This email originated from outside of West Midlands Police. Do not click links or open attachments unless you are sure the content is safe.

Dear mam

Thanks for your email. I approve all the amends which you have done.

Kind regards  
Yohan

On Tue, 1 Jun 2021 at 13:08, Jennifer Mellor [REDACTED] wrote:

Good afternoon

Further to our telephone conversations please find attached an operating schedule which West Midlands Police feel is proportionate and necessary for your premises. I note that your current license has no conditions on at all so have taken the opportunity to ensure all four of the licensing objectives will be taken into account moving forward with this variation.

As I said on the phone, any concerns or issues, please give me a call on my mobile to discuss further. I have reduced the hours slightly as agreed and have removed late night refreshment as you confirmed this was not required. If you are in a position to accept these amendments, can you please return this email with your approval.

Many thanks

Jennifer

Jennifer Mellor

Walsall Licensing and Regulatory Services Officer

Walsall Partnership Team

Walsall Police

Civic Centre, Walsall



**Sign-up** for neighbourhood policing alerts at [www.wmnow.co.uk](http://www.wmnow.co.uk)

**Follow us on social media**  
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**Emerald Supermarket, 38 Bridge Street, Walsall West Midlands**

**Amended Opening Hours**

**Monday – Wednesday 08:00 – 23:00**

**Thursday – Saturday 08:00 – 02:30**

**Sunday 08:00 – 23:00**

**Remove Late Night Refreshment from the application**

**General – All four licensing objectives.**

The Premises Licence holder must ensure all staff receives adequate training commensurate with their role in the premises and relevant to the four objectives of the Licensing Act 2003. Training must be recorded and updated every six months and be available for the inspection by responsible authorities on reasonable request

**The prevention of crime and disorder.**

**CCTV**

CCTV must be installed and cover all public internal areas, including all public entry and exit points. The CCTV unit must be positioned in a secure part of the licensed premises. Access to the system must be allowed immediately to the Police, Trading Standards or an authorised officer of the Licensing Authority in accordance with the Data Protection Act where it is necessary to do so for the prevention of crime and disorder, prosecution or apprehension of offenders or where disclosure is required by law.

The CCTV system must be maintained so as to be fully operational and recording continually whilst the premises are open for licensable activities and during all times when customers remain on the premises.

All images must be kept for a consecutive 31 day period and to be produced to the Police, Trading Standards or an authorised officer of the Licensing Authority upon request or within 24 hours of such a request.

There must be a member of staff available at all times who is trained and capable of operating the CCTV system and also downloading any footage required by the Police, Trading Standards or an authorised officer of the Licensing Authority.

The CCTV system clock must be set correctly and maintained taking account of GMT and BST.

There must be notices displayed throughout the premises stating that CCTV is in operation.

A fully trained member of staff will at all times be available who is capable of operating the system and downloading images required by Police and local authority officers.

#### Door Staff

A Security Industry Authority (SIA) registered Door Supervisor must be present and on duty when the premises are open for trade on a Thursday, Friday and Saturday from 23:00 hours and must remain at the premises until such time the premises are closed and all members of the public have left the premise.

When door supervisors are employed a written record shall be kept on the premises by the Designated Premises Supervisor of every person employed on the premises as a door supervisor in a register kept for that purpose. That record must contain the following details:

Name, date of birth and home address

Security Authority licence number

The time and date each security staff starts and finishes duty

Each entry shall be signed by the security staff

This register must be kept fully updated at all times and remain at the premises and be available for inspection immediately by an authorised officer of the Licensing Authority, the Security Industry Authority or Police.

All persons utilised at the premises in the capacity of a Door Supervisor must wear high visibility clothing at all times they are deployed.

#### Incident log

An incident log must be kept at the premises and made available on request to the Police or an authorised officer of the Licensing Authority. It must be completed within 24 hours of the incident and must record the following:

All crimes reported to the premises

All ejections of patrons

Any complaints received concerning crime and disorder

Any incidents or disorder

All seizures of drug or offensive weapons

Any visits from Responsible Authorities.

### **Prevention of Public Nuisance.**

Notices must be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.

### **Public Safety**

No open vessels containing alcoholic drinks must be taken from the premises.

### **The protection of children from harm.**

#### **Challenge 25**

A challenge 25 scheme must operate at the premises whereby any person who appears to be under 25 years of age and unknown to the staff member serving as a person over 18 years of age shall not serve alcohol unless they provide identification to prove they are over 18 years of age.

The only acceptable forms of identification allowed are a valid passport, a valid photo ID driving license or a valid proof of age scheme card with the PASS approved hologram.

Challenge 25 signage must be displayed in a clear and prominent public place at the premises.

A refusals register must be held at the premises and contain details of the time and date of any sales that are refused in relation to persons that are under age. This register must be made available for inspection upon request by a Responsible Authority. This register can be written or electronic.

All staff must be fully trained in relation to the Challenge 25 scheme before being allowed to sell alcohol and a record must be kept of staff training. Training must be refreshed at least every 12 calendar months. Such training must be recorded and be maintained at the premises and made available for inspection upon request.

## Appendix 6

# Response from Children Services

## Sayful Alom

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**Subject:** FW: CONSULTATION - 38 Bridge Street, Walsall, WS1 1JG

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**From:** Rebecca Warren [REDACTED]  
**Sent:** 11 June 2021 17:38  
**To:** Licensing <Licensing@walsall.gov.uk>  
**Subject:** RE: CONSULTATION - 38 Bridge Street, Walsall, WS1 1JG

Children's services hold no information that would impact upon this application and therefore provide no comment or reason to object.

Regards

**Becky Warren**  
**Group Manager**  
**MASH & Initial Response Service.**  
Zone 2D, 2nd floor Civic Centre,  
Darwall Street,  
Walsall.  
WS1 1TP

---

**From:** Reba Danson [REDACTED] **On Behalf Of** Licensing  
**Sent:** 21 May 2021 12:19  
**To:** 'alcohol@homeoffice.gsi.gov.uk' <[alcohol@homeoffice.gsi.gov.uk](mailto:alcohol@homeoffice.gsi.gov.uk)>; Rebecca Warren <[Rebecca.Warren@walsall.gov.uk](mailto:Rebecca.Warren@walsall.gov.uk)>; Community Protection <[CommunityProtection@walsall.gov.uk](mailto:CommunityProtection@walsall.gov.uk)>; firesafety.admin <[firesafety.admin@wmfs.net](mailto:firesafety.admin@wmfs.net)>; Namita Mistry <[Namita.Mistry@walsall.gov.uk](mailto:Namita.Mistry@walsall.gov.uk)>; Patrick Duffy <[Patrick.Duffy@walsall.gov.uk](mailto:Patrick.Duffy@walsall.gov.uk)>; TradingStandards <[TradingStandards@walsall.gov.uk](mailto:TradingStandards@walsall.gov.uk)>; 'Walsall\_licensing@west-midlands.pnn.police.uk' <[Walsall\\_licensing@west-midlands.pnn.police.uk](mailto:Walsall_licensing@west-midlands.pnn.police.uk)>; Environmental Health <[EnvironmentalHealth@walsall.gov.uk](mailto:EnvironmentalHealth@walsall.gov.uk)>  
**Subject:** CONSULTATION - 38 Bridge Street, Walsall, WS1 1JG

Dear Colleague,

I hope this email finds you well.

I am writing to notify you that the Council has received a full variation application in relation to premises licence WS/PRL/0366, for the premises below:

**The Emerald Supermarket, 38 Bridge Street, Walsall, WS1 1JG.**

The application is to add Late Night Refreshment and extend the licensing hours.

The application is complete and valid and the **last day for representations is 18 June 2021**. Responses received after that date cannot be taken into account.

Please let me know if you require any further information and I will be pleased to assist.

With regards



**Reba Danson  
Licensing Officer  
Resilient Communities  
Economy Environment & Communities**

**Walsall MBC  
Civic Centre,  
Darwall Street,  
Walsall,  
WS1 1TP**



[Licensing@walsall.gov.uk](mailto:Licensing@walsall.gov.uk)  
[www.walsall.gov.uk](http://www.walsall.gov.uk)



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## Appendix 7

# Response from Planning Services

## Sayful Alom

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**Subject:** FW: NEW LICENSE APPLICATION

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**From:** Namita Mistry  
**Sent:** 18 June 2021 08:08  
**To:** Licensing <Licensing@walsall.gov.uk>  
**Subject:** NEW LICENSE APPLICATION

Stamped Date Rec'd	Date Rec'd into LIT	Ref No.	Applicant	Address	16 Day Due Date	24 Day Due Date	Outcome	Passed to  Legal
21/5/21	21/5/21	21/022	The Emerald Supermarket, 38	Bridge Street, Walsall WS1 1JG	14/6/21	18/06/21 Closing Date	No Comments received from Planning Officer	18/6/21

NO COMMENTS RECEIVED FROM PLANNING OFFICER.

REGARDS

Namita Mistry  
Land Charges Information Officer  
Land Charges  
Planning and Building Control  
Economy and Environment  
Walsall M.B.C.  
2<sup>nd</sup> Floor, Civic Centre,  
Darwall Street,  
Walsall WS1 1DG



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**E-mail Security:** *Communication by internet email is not secure as messages can be intercepted and read by someone else. Therefore we strongly advise you not to email any information, which if disclosed to unrelated third parties would be likely to cause harm or distress. If you have an enquiry of this nature please provide a postal address to allow us to communicate with you in a more secure way. If you want us to respond by email you must realise that there can be no guarantee of privacy.*

## Appendix 8

# Representations from 'Other Persons'

**Subject:** FW: Objection To Licence Variation

-----Original Message-----

From: daniel [REDACTED]  
Sent: 18 June 2021 13:08  
To: Licensing <Licensing@walsall.gov.uk>  
Cc: [REDACTED]  
Subject: Objection To Licence Variation

CAUTION:This email originated from outside of the council. If you have any doubts do not click links or open attachments. You should never be asked to enter your username and password into an external link.

Dear Licensing,

Please see attached Walsall Pubwatch's objection to Emeraid Supermarket Variation.

Regeard,

Daniel Morris  
Walsall Pubwatch



Dear Licensing,

Walsall Pubwatch as a group wish to make an objection to the following variation of premises licence:

The Emeraid Super Market  
38 Bridge Street  
Walsall  
WS1 1JG

Proposed:

To extend the sale of alcohol to

Mon-Wed: 8:00 - 23:00

Thur-Sun: 8:00 - 04:00

and to add late night refreshments from: Thur to Sun 23:00 - 4:00.

Pubwatch Group consists of 23 Members (venues) In and around Walsall Town and all agree with the following objection...

We formally object to the granting of this application on the following grounds:

1. It will lead to an increase in Crime and Disorder
2. It will lead to Additional ASB
3. This area is highlighted as an area of concern, the granting of this application will have a further detrimental effect and add to the already stretched resources of the emergency services.
4. Majority of venues in close proximity of this supermarket operate a plastic policy after a certain time to protect staff and the public. We feel as people move from one venue to another they could access glass bottles from this supermarket and possibly use it as a weapon.

Kind Regards,

Daniel Morris  
Chairman  
Walsall Pubwatch

  
contact@walsallpubwatch.com

Religion  
42-46 Bridge Street  
Walsall  
WS1 8HR  
Clubheadoffice@gmail.com

Dear Licensing,

we are writing to you to make a formal objection to the following license vararation:

The Emeraid Super Market  
38 Bridge Street  
Walsall  
WS1 1JG

Proposed: To extend the sale of alcohol to  
Monday-Wednesday: 8:00 - 23:00  
Thursday-Sunday: 8:00 - 04:00  
and to add late night refreshments from:  
Thursday to Sunday 23:00 - 4:00.

Our objection is for the following reasons:

- We feel It will lead to an increase in Crime and Disorder on the street later in the night.
- It will increase people drinking on the street and littering the area.
- Make it unsafe for staff and the public having people potentially with glass bottles on the street late at night.
- Increase the need for more police resources.

Kind Regards,

Rick Helsby  
General Manager  
Religion  
Clubheadoffice@gmail.com



## Appendix 9

# Link to Statement of Licensing Policy

[https://go.walsall.gov.uk/Portals/0/images/importedddocuments/2016\\_licensing\\_policy\\_statement.pdf](https://go.walsall.gov.uk/Portals/0/images/importedddocuments/2016_licensing_policy_statement.pdf)

# Appendix 10

## Case Law

All England Law Reports/2009/Volume 1 /R (on the application of Daniel Thwaites plc) v Wirral Borough Magistrates' Court - [2009] 1 All ER 239

[2009] 1 All ER 239

## **R (on the application of Daniel Thwaites plc) v Wirral Borough Magistrates' Court**

[2008] EWHC 838 (Admin)

**QUEEN'S BENCH DIVISION (ADMINISTRATIVE COURT)**

**BLACK J**

**10 MARCH, 6 MAY 2008**

*Licensing – Licensing authorities – General duties of licensing authorities – Licensing objectives – Licensing guidance – Application for licence – Licensing authority granting licence – Local objectors appealing to magistrates' court – Magistrates' court imposing restrictions – Whether restrictions necessary to promote licensing objectives – Whether magistrates' court having proper regard to guidance – [Licensing Act 2003, s 4](#).*

The [Licensing Act 2003](#) was intended to provide a 'more efficient', 'more responsive' and 'flexible' licensing system which did not interfere unnecessarily. By virtue of s 4<sup>a</sup> of the 2003 Act a licensing authority had to carry out all its functions under the Act with a view to promoting the licensing objectives which were the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. A licensing authority also had to have regard to guidance issued by the Secretary of State as to the discharge of its functions under the 2003 Act. The claimant owned a hotel which it operated licensed premises (the premises). It had originally held a licence under the [Licensing Act 1964](#). In June 2005 it commenced an application to the licensing sub-committee (the licensing authority) for the existing licence to be converted to a premises licence under the 2003 Act and for it to permit music and dancing to 11 pm and alcohol sales until midnight on all nights except Friday and Saturday and, on Friday and Saturday nights, music and dancing to midnight and alcohol sales until 1 pm, with the doors closing one hour after the last alcohol sale every night. There was opposition to the proposals at the hearing from the local conservation society (the first interested party) and other local residents. There was no objection from the police, as the extension to the hours was not that originally proposed and had been restricted to the hours acceptable to the police. The licence was granted including an extra 30 minutes for the hours the premises were to be open to the public over Christmas and at major bank holidays. The licensing authority imposed conditions which were aimed at controlling noise, namely that the area outside had to be cleared by 11 pm. The interested parties appealed against the decision to the magistrates' court on the ground that the licensing authorities' decision was not made with a view to promotion of and in accordance with the licensing objectives pursuant to s 4. The justices allowed the appeal, imposing shorter hours than those requested for the supply of alcohol and for entertainment even though they accepted that there had been no reported complaint in regard to public nuisance and that the extended hours had operated without any incidents. Their concern was that, because of

<sup>a</sup> Section 4, so far as material, is set out at [17], below

'migration'—customers coming to the premises when other premises in the vicinity closed—public nuisance and crime and disorder would be an inevitable consequence of leaving the hours as granted by the licensing authority. The claimant applied for judicial review. It argued that the decision was unlawful as it was not in line with the philosophy of the 2003 Act and imposed restrictions on its operation which were not necessary to promote the licensing objectives; that it was based on speculation rather than evidence; that it took into account irrelevant considerations and failed to take into account proper considerations; and that it was a decision to which no properly directed magistrates' court could have come on the evidence. In so far as the court imposed conditions as to the time at which the premises had to close, it was submitted that that was not a matter which could be regulated under the 2003 Act. It was further argued that the magistrates failed to give adequate reasons for their decision.

**Held** – A licensing authority or magistrates' court was not entitled simply to ignore the guidance or fail to give it any weight. When a magistrates' court was entitled to depart from the guidance and justifiably did so, it had to give proper reasons for doing so. The justices had to give full reasons for their decision overall and full reasons for departing from the guidance if they considered it proper to do so. It was incumbent on them to at least advert in broad terms to those matters which they had taken into account. In the instant case, it would be wrong to say that the justices had failed to take account of the licensing objectives, however, they did not take proper account of the changed approach to licensing introduced by the 2003 Act. With proper regard to the Act and the guidance, they would have approached the matter with a greater reluctance to impose regulation and would have looked for real evidence that it was required in the circumstances of the case. Their conclusion that restriction was required on the basis of a risk of 'migration' from other premises in the vicinity was not one to which a properly directed bench could have come. The fact that the police had not opposed the hours sought on that basis should have weighed very heavily with them. They should also have considered specifically the question of precisely how frequently the premises would be likely to be open late and made findings about it. Having formed a clear view of how frequently late opening could be anticipated, they would also have been able to draw more reliable conclusions about the willingness of customers from further afield to migrate to the claimant's premises. They proceeded without proper evidence and gave their own views excessive weight and their resulting decision limited the hours of operation of the premises without it having been established that it was necessary to do so to promote the licensing objectives. In all the circumstances, their decision was unlawful. Accordingly, the application would be allowed and the decision of the magistrates' court would be quashed (see [38], [42], [45], [46], [55], [63]–[65], [68], below).

*Per curiam.* The hours of opening can be regulated as part of the licensing of premises. There is power to regulate the time by which people must leave the premises. While keeping premises open is not a licensable activity as such, the operating schedule which must be supplied with an application for a premises licence must include a statement of certain matters set out in s 17(4) of the 2003 Act, including not only the times when it is proposed that the licensable activities are to take place but also 'any other times during which it is proposed that the premises are to be open to the public'. On a new grant of a premises licence, where there are no representations, the licensing authority has to grant the application subject only to such conditions as are consistent with the

*[2009] 1 All ER 239 at 241*

operating schedule. If it is necessary to promote the licensing objectives, these conditions should include a provision requiring the premises to be shut by the time that is specified in the operating schedule. If representations are made and the licensing authority ultimately grants the application, it can depart from the terms set out in the operating schedule when imposing conditions in so far as this is necessary for the promotion of the licensing objectives. It follows that it can impose an earlier time for the premises to be locked up than that specified in the operating schedule. The role of the licensing authority and, if there is an appeal, the court, has two dimensions: the fundamental task is to license activities which require a licence and the associated task is to consider what, if any, conditions are imposed on the applicant to ensure the promotion of the licensing objectives. A requirement that the premises close at a particular time is a condition just like any other, such as keeping doors and windows closed to prevent noise. There is no reason why a condition of closing up the premises at a particular time should not therefore be imposed where controlling the hours of the

licensable activities on the premises (and such other conditions as may be imposed) is not sufficient to promote the licensing objectives (see [67], below).

## Notes

For general duties of licensing authorities, see 26 *Halsbury's Laws* (4th edn) (2004 reissue) para 103.

For the [Licensing Act 2003, s 5](#), see 24 *Halsbury's Statutes* (4th edn) (2006 reissue) 484.

## Cases referred to in judgment

*R v Westminster City Council, ex p Ermakov* [\[1996\] 2 All ER 302](#), CA.

*R (on the application of JD Wetherspoon plc) v Guildford BC* [\[2006\] EWHC 815 \(Admin\)](#), [\[2007\] 1 All ER 400](#).

## Application for judicial review

The claimant Daniel Thwaites plc, with permission granted by Pitchford J on 2 November 2006, applied for judicial review of (i) the licensing decision made by the Wirral Magistrates' Court on 5 April 2006 and (ii) the court's decision on 21 April 2006 concerning the costs of the proceedings. The Saughall Massie Conservation Society (the first interested party) and Wirral Metropolitan Borough Council (the second interested party) appeared as interested parties. The magistrates' court filed material in response to the proceedings but was not represented at the hearing. The facts are set out in the judgment.

*David Pickup* (instructed by *Naphens plc*) for the claimant.

*David Flood* (instructed by *Kirwans*) for the first interested party.

*Matthew Copeland* (instructed by *Wirral MBC*) for the second interested party.

*Judgment was reserved.*

**6 May 2008. The following judgment was delivered.**

## BLACK J.

[1] This is an application by Daniel Thwaites plc (the claimant) for judicial review of a licensing decision made by the Wirral Magistrates' Court (the magistrates' court) on 5 April 2006 and that court's decision on 21 April 2006

*[2009] 1 All ER 239 at 242*

concerning the costs of the proceedings. The claimant seeks an order quashing both decisions. Permission to apply for judicial review was granted by Pitchford J on 2 November 2006.

### **The factual background**

[2] The claimant owns the Saughall Hotel in Saughall Massie, Wirral which it operates as licensed premises (the premises). It originally held a licence under the [Licensing Act 1964](#). In June 2005, it commenced an application to the licensing sub-committee of the Metropolitan Borough of Wirral (the licensing authority) for the existing licence to be converted to a premises licence under the [Licensing Act 2003](#) (the Act) and for the licence to be varied simultaneously.

[3] In essence, the claimant was seeking to conduct business at the premises for longer hours than were permitted under the original licence. The police did not support the extension of the hours to the extent that the claimant initially proposed. The claimant agreed to restrict the hours to those that were acceptable to the police. Accordingly, the licensing authority was asked to grant a licence that would permit music and dancing to 11 pm and alcohol sales until midnight on all nights except Friday and Saturday and, on Friday and Saturday nights, music and dancing to midnight and alcohol sales until 1 pm, with the doors closing one hour after the last alcohol sale every night.

[4] The police withdrew their representations against the modified proposals and did not appear before the licensing authority when the matter was heard on 23 August 2005. No representations were made by the Wirral Environmental Health Services either. However, there was opposition to the proposals at the hearing from the Saughall Massie Conservation Society (the first interested party) and other Saughall Massie residents.

[5] The claimant told the licensing authority at the hearing that the hours of operation at the premises would not vary significantly from the existing hours of operation and that the application for extended hours was to allow flexibility to open later 'on special occasions'. This was a matter of which the licensing authority took note as is recorded in the minutes of their determination.

[6] The licence was granted in the modified terms requested together with an additional hour for licensable activities and an extra 30 minutes for the hours the premises were to be open to the public over Christmas and at the major bank holidays. Special arrangements were also permitted for New Year's Eve. The licensing authority removed certain conditions that had been imposed on the old licence (requiring all alcohol to be consumed within 20 minutes of the last alcohol sale and banning children under 14 from the bar) and imposed other conditions which were obviously aimed at controlling noise, namely that the area outside must be cleared by 11 pm, that the premises must promote the use of taxi firms which use a call-back system, that all doors and windows must be kept closed when regulated entertainment was provided and that prominent notices should be placed on the premises requiring customers to leave quietly.

[7] The Saughall Massie Conservation Society and 'others' appealed against the licensing decision to the magistrates' court on the ground that the licensing authority's decision 'was not made with a view to promotion of and in accordance with the licensing objectives pursuant to Section 4, Part 2 of [the Act]'.

[8] The appeal occupied the magistrates' court from 3–5 April 2006. The respondents to the appeal were the licensing authority and the claimant which both defended the licensing authority's decision. Witnesses were called

*[2009] 1 All ER 239 at 243*

including Saughall Massie residents, Police Sergeant Yehya who dealt with the stance of the Merseyside police, and Mr Miller, the manager of the premises.

[9] The justices granted the appeal. Their reasons run to three pages of typescript, one page of which is entirely taken up with setting out the new hours of operation they imposed. These permitted entertainment until 11 pm and alcohol sales until 11.30 pm on all nights except Friday and Saturday when entertainment would be permitted until 11.30 pm and alcohol sales until midnight. The premises could remain open to the public until midnight on all nights except Friday and Saturday when they could close at 1 am. Similar provisions were imposed to those imposed by the licensing authority in relation to later opening at Christmas and major bank holidays and the provisions relating to New Year's Eve and the conditions of the licence remained unaltered.

[10] The new licence had come into effect on 24 November 2005 so the new arrangements had been running for several months by the time of the hearing before the magistrates' court. There had been no formal or recorded complaints against the premises under the old or the new regime as the justices acknowledged in their reasons. The residents who gave evidence were fearful of problems if the extended hours were allowed in the summer. The chairman of the Conservation Society, who gave oral evidence, spoke of people urinating in the gardens and a problem with litter. It appears from the statement filed by the chairman of the bench for these judicial review proceedings that evidence was also given of interference with machinery on nearby Diamond Farm. The justices' reasons make no reference at all to these matters. As to the statements of the 'Witnesses of the Appellant', they say simply that they have read and considered them but attached little or no weight to them.

[11] The justices and their legal advisor have filed a considerable amount of material in response to the judicial review proceedings, in all 31 closely typed pages. These comprise their response to the claim, statements from Alistair Beere (who was the chairman of the bench), Mary Woodhouse (another of the bench) and Stephen Pickstock (the legal advisor), and what is said in the index to be a document by Mr Beere from which he prepared his statement. There was limited argument before me as to the status of these documents and the weight that I should give to them. It was not submitted that I should decline to have *any* regard to them although I think it is fair to say that it was common ground between the parties, rightly in my view, that I should concentrate principally on the reasons. It is established by authorities such as *R v Westminster City Council, ex p Ermakov* [1996] 2 All ER 302 that the court can admit evidence to elucidate or, exceptionally, correct or add to the reasons given by the decision maker at the time of the decision but that it should be very cautious about doing so. The function of such evidence should generally be elucidation not fundamental alteration, confirmation not contradiction. In the circumstances, I have read carefully what the magistrates have provided but approached its role in the judicial review proceedings cautiously.

### **The broad nature of the claim in relation to the licensing decision**

[12] The claimant argues that the magistrates' court decision is unlawful for a number of reasons. It is argued that the decision was not in line with the philosophy of the Act and imposed restrictions on the claimant's operation which were not necessary to promote the licensing objectives set out in that Act, that it was based on speculation rather than evidence, that it took into

[2009] 1 All ER 239 at 244

account irrelevant considerations and failed to take into account proper considerations, and that it was a decision to which no properly directed magistrates' court could have come on the evidence. In so far as the court imposed conditions as to the time at which the premises must close, it is submitted that this was not a matter which can be regulated under the Act. It is further argued that the magistrates failed to give adequate reasons for their decision.

### **The legal background**

**[13]** The 2003 Act was intended to provide a 'more efficient', 'more responsive' and 'flexible' system of licensing which did not interfere unnecessarily. It aimed to give business greater freedom and flexibility to meet the expectations of customers and to provide greater choice for consumers whilst protecting local residents from disturbance and anti-social behaviour.

**[14]** Note 12 of the explanatory notes to the Act gives an indication of the approach to be taken under the Act. It reads:

'In contrast to the existing law, the Act does not prescribe the days or the opening hours when alcohol may be sold by retail for consumption on or off premises. Nor does it specify when other licensable activities may be carried on. Instead, the applicant for a premises licence or a club premises certificate will be able to choose the days and the hours during which they wish to be authorised to carry on licensable activities at the premises for which a licence is sought. The licence will be granted on those terms unless, following the making of representations to the licensing authority, the authority considers it necessary to reject the application or vary those terms for the purpose of promoting the licensing objectives.'

**[15]** Section 1 of the Act provides:

'(1) For the purposes of this Act the following are licensable activities—(a) the sale by retail of alcohol, (b) [clubs] (c) the provision of regulated entertainment, and (d) the provision of late night refreshment.'

**[16]** To carry on a licensable activity, a premises licence granted under Pt 3 of the Act is generally required (see s 2). Application for a premises licence must be made to the relevant licensing authority (see s 17(1)).

**[17]** By virtue of s 4, the licensing authority must carry out all its functions under the Act (including its functions in relation to determining an application for a premises licence or an application for a variation of a premises licence) with a view to promoting the 'licensing objectives'. These are set out in s 4 as follows:

'(2) The licensing objectives are—(a) the prevention of crime and disorder; (b) public safety; (c) the prevention of public nuisance; and (d) the protection of children from harm.'

**[18]** In carrying out its licensing functions, by virtue of s 4(3) the licensing authority must also have regard to its licensing statement published under s 5 and any guidance issued by the Secretary of State under s 182.

**[19]** Section 182 obliges the Secretary of State to issue guidance to licensing authorities on the discharge of their functions under the Act. Guidance was issued in July 2004 (the guidance). It was updated in June 2007 but it is the original guidance that is relevant in this case. In any event, none of the changes made are material to the issues I have to determine.

*[2009] 1 All ER 239 at 245*

**[20]** The foreword (pp 7–8) says that the guidance—

'is intended to aid licensing authorities in carrying out their functions under the 2003 Act and to ensure the spread of best practice and greater consistency of approach. This does not mean that we are intent on eroding local discretion. On the contrary, the legislation is fundamentally based on local decision-making informed by local knowledge and local people. Our intention is

to encourage and improve good operating practice, promote partnership and to drive out unjustified inconsistencies and poor practice.'

**[21]** As the guidance says in para 1.7, it does not replace the statutory provisions of the Act or add to its scope. Paragraph 2.3 says:

'Among other things, section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must have regard to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. However, it is recognised that the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and so long as the Guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. When doing so, licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.'

**[22]** An application to the licensing authority for a premises licence must be accompanied by an operating schedule in the prescribed form including a statement of the matters set out in s 17(4) which are as follows:

'(a) the relevant licensable activities, (b) the times during which it is proposed that the relevant licensable activities are to take place, (c) any other times during which it is proposed that the premises are to be open to the public, (d) where the applicant wishes the licence to have effect for a limited period, that period, (e) where the relevant licensable activities include the supply of alcohol, prescribed information in respect of the individual whom the applicant wishes to have specified in the premises licence as the premises supervisor, (f) where the relevant licensable activities include the supply of alcohol, whether the supplies are proposed to be for consumption on the premises or off the premises, or both, (g) the steps which it is proposed to take to promote the licensing objectives, (h) such other matters as may be prescribed.'

**[23]** Section 18 deals with the determination of an application for a premises licence. Section 35 deals in very similar terms with the determination of an application to vary a premises licence. It will be sufficient only to set out here the provisions of s 18.

**[24]** Section 18(2) provides that, subject to sub-s (3), the authority must grant the licence in accordance with the application subject only to:

'(a) such conditions as are consistent with the operating schedule accompanying the application, and (b) any conditions which must under section 19, 20 or 21 be included in the licence.'

**[25]** Section 19 deals with premises licences which authorise the supply of alcohol. Such licences must include certain conditions ensuring that every

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supply of alcohol is made or authorised by a person who holds a personal licence and that no supply of alcohol is made when there is no properly licensed designated premises supervisor. Sections 20 and 21 are not relevant to this claim.

**[26]** Section 18(3) provides that where relevant representations are made, the authority has certain specified obligations. In so far as is relevant to this appeal 'relevant representations' are defined in s 18(6) as follows:

'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) ...'

**[27]** Subsection (7) provides:

'The requirements of this subsection are—(a) that the representations were made by an interested party or responsible authority 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 an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.'

**[28]** Where relevant representations are made, the authority must hold a hearing to consider them unless the authority, the applicant and each person who has made representations agrees that a hearing is unnecessary. By virtue of s 18(3)(b), the authority must also—

'having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.'

**[29]** Section 18(4) provides:

'The steps are—(a) to grant the licence subject to—(i) the conditions mentioned in subsection (2)(a) modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and (ii) any condition which must under section 19, 20 or 21 be included in the licence; (b) to exclude from the scope of the licence any of the licensable activities to which the application relates; (c) to refuse to specify a person in the licence as the premises supervisor; (d) to reject the application.'

**[30]** Conditions are modified for the purposes of sub-s (4)(a)(i) if any of them is altered or omitted or any new condition is added.

**[31]** During the currency of a premises licence, by virtue of s 51, an interested party (broadly speaking, a local resident or business) or a responsible authority (police, fire, environmental health etc) may apply to the relevant licensing authority for a review of the licence on a ground which is relevant to one or more of the licensing objectives. By virtue of s 52, a hearing must be held to consider the application and any relevant representations and the authority must take such steps from a specified list as it considers necessary for the promotion of the licensing objective. The steps range from modifying the conditions of the licence to suspending it or revoking it completely.

**[32]** The Act makes provision in Pt 5 for 'permitted temporary activity' which, loosely speaking, is a form of ad hoc licensing to cover licensable activities which are not covered by a more general licence. The system involves proper notification of an event to the licensing authority and the police.

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Provided the applicable number of temporary event notices has not been exceeded and the police do not intervene, the event is automatically permitted. Temporary event notices can only be given in respect of any

particular premises 12 times in a calendar year and the period for which each event lasts must not exceed 96 hours.

[33] Section 181 provides for appeals to be made against decisions of the licensing authority to a magistrates' court which is, of course, how the decisions in relation to which judicial review is sought in this case came to be made.

#### The detail of the claim

[34] The claimant submits that in making its decision to allow the appeal in relation to the premises licence, the magistrates' court failed in a number of respects to take account of the changes that the new licensing regime has made and failed to adopt the approach required by the Act. It is further submitted that the magistrates failed properly to consider and take into account the guidance.

[35] There is no doubt that the guidance is relevant in the magistrates' decision-making. As I have set out above, s 4(3) requires the licensing authority to 'have regard' to the guidance. By extension, so must a magistrates' court dealing with an appeal from a decision of the licensing authority. The guidance says:

'10.8 In hearing an appeal against any decision made by a licensing authority, the magistrates' court concerned will have regard to that licensing authority's statement of licensing policy and this Guidance. However, the court would be entitled to depart from either the statement of licensing policy or this Guidance if it considered it is justified to do so because of the individual circumstances of any case.'

[36] Mr Pickup submits that although the guidance is not binding and local variation is expressly permitted, it should not be departed from unless there is good reason to do so.

[37] Mr Flood for the first interested party submits that the guidance simply serves to provide information for the magistrates and provided that they have had regard to it, that is sufficient. He also points out that, in some respects (as is clear from the wording of the guidance), the guidance is a statement of government belief rather than proved fact. Inviting attention to the judgment of Beatson J in *R (on the application of JD Wetherspoon plc) v Guildford BC* [2006] EWHC 815 (Admin), [2007] 1 All ER 400, he identifies that different policy elements in the guidance may pull in different directions in a particular case, flexibility and customer choice potentially conflicting with the need to prevent crime and disorder. He submits that provided that the magistrates consult the guidance, they do not need to use it as 'a decision making matrix that the deciding Court has to sequentially address in making its decision in the manner it would if considering a section of a statute'.

[38] There is no doubt that regard must be had to the guidance by the magistrates but that its force is less than that of a statute. That is common ground between the parties. The guidance contains advice of varying degrees of specificity. At one end of the spectrum, it reinforces the general philosophy and approach of the Act. However, it also provides firm advice on particular issues, an example being what could almost be described as a prohibition on local authorities seeking to engineer staggered closing times by setting quotas

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for particular closing times. I accept that any individual licensing decision may give rise to a need to balance conflicting factors which are included in the guidance and that in resolving this conflict, a licensing authority or magistrates' court may justifiably give less weight to some parts of the guidance and more to others. As the guidance itself says, it may also depart from the guidance if particular features of the individual case require that. What a licensing authority or magistrates' court is not entitled to do is simply to *ignore* the guidance or fail to give it any weight, whether because it does not agree with the government's policy or its

methods of regulating licensable activities or for any other reason. Furthermore, when a magistrates' court is entitled to depart from the guidance and justifiably does so, it must, in my view, give proper reasons for so doing. As para 2.3 of the guidance says in relation to the need for licensing authorities to give reasons:

'When [departing from the guidance], licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.'

This is a theme to which the guidance returns repeatedly and is a principle which must be applicable to a magistrates' court hearing an appeal as it is to a licensing authority dealing with an application in the first instance. I agree with Mr Flood for the first interested party that the magistrates did not need to work slavishly through the guidance in articulating their decision but they did need to give full reasons for their decision overall and full reasons for departing from the guidance if they considered it proper so to do.

**[39]** In this case, Mr Pickup submits that proper attention to the guidance would have helped the magistrates to come to a correct and reasonable decision and that they have failed to adhere to it without proper reason and failed to carry out their licensing function in accordance with the Act.

**[40]** The foundation of the claimant's argument is that the Act expects licensable activities to be restricted only where that is *necessary* to promote the four licensing objectives set out in s 4(2). There can be no debate about that. It is clearly established by the Act and confirmed in the guidance. For example, in the Act, s 18(3)(b), dealing with the determination of an application for a premises licence, provides that where relevant representations are made the licensing authority must 'take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives' (the steps in sub-s (4) include the grant of the licence subject to conditions). Section 35(3)(b), dealing with the determination of an application to vary a premises licence, is in similar terms. The guidance repeatedly refers, in a number of different contexts, to the principle that regulatory action should only be taken where it is *necessary* to promote the licensing objectives. In particular, it clearly indicates that conditions should not be attached to premises licences unless they are necessary to promote the licensing objectives, see for example para 7.5 and also para 7.17 which includes this passage:

'... Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further than what is needed for that purpose.'

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**[41]** The guidance also refers a number of times to the need for regulation to be 'proportionate'. This is not a term contained in the Act but if a regulatory provision is to satisfy the hurdle of being 'necessary', it must in my view be confined to that which is 'proportionate' and one can understand why the guidance spells this out.

**[42]** Mr Pickup submits, and I accept, that the Act anticipates that a 'light touch bureaucracy' (a phrase used in para 5.99 of the guidance) will be applied to the grant and variation of premises licences. He submits that this means that unless there is evidence that extended hours will adversely affect one of the licensing objectives, the hours should be granted. A prime example of this arises when an application for a premises licence is made and there are no relevant representations made about it. In those circumstances, s 18(2) obliges the licensing authority to grant the licence and it can only impose conditions which are consistent with the operating schedule submitted by the applicant. Mr Pickup says that such a light touch is made possible, as the guidance itself says, by providing a review mechanism under the Act by which to deal with concerns relating to the licensing objectives which arise following the grant of a licence in respect of individual premises. He invites attention also to the existence of other provisions outside the ambit of the Act which provide remedies

for noise, for example the issue of a noise abatement notice or the closure of noisy premises under the [Anti-social Behaviour Act 2003](#). The guidance makes clear that the existence of other legislative provisions is relevant and may, in some cases, obviate the need for any further conditions to be imposed on a licence. Paragraph 7.18 from the section of the guidance dealing with attaching conditions to licences is an illustration of this approach:

'It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.'

**[43]** The guidance includes a section dealing with hours of trading which the claimant submits further exemplifies the philosophy of the Act. It begins with para 6.1 which reads:

'This Chapter provides guidance on good practice in respect of any condition imposed on a premises licence or club premises certificate in respect of hours of trading or supply.'

**[44]** It continues:

'6.5 The Government strongly believes that fixed and artificially early closing times promote, in the case of the sale or supply of alcohol for consumption on the premises, rapid binge drinking close to closing times; and are a key cause of disorder and disturbance when large numbers of customers are required to leave premises simultaneously. This creates excessive pressures at places where fast food is sold or public or private transport is provided. This in turn produces friction and gives rise to disorder and peaks of noise and other nuisance behaviour. It is therefore important that licensing authorities recognise these problems when addressing issues such as the hours at which premises should be used to carry on the provision of licensable activities to the public.

6.6 The aim through the promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of

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people from licensed premises through longer opening times. Arbitrary restrictions that would undermine the principle of flexibility should therefore be avoided. We will monitor the impact of the 2003 Act on crime and disorder and the other licensing objectives. If necessary in the light of these findings, we will introduce further legislation with the consent of Parliament to strengthen or alter any provisions.'

**[45]** The claimant submits that in imposing shorter hours than it requested for the supply of alcohol and for entertainment, the magistrates went beyond that which was necessary for these premises and failed to take into account that, as the guidance explains, longer opening times would in fact reduce the potential for problems arising from licensed premises whereas curtailing operations could run counter to the licensing objectives.

**[46]** The magistrates' reasons record their acceptance that there had been no reported complaint in regard to public nuisance and that the extended hours had operated without any incidents. The magistrates also record in the reasons, as I have already said, that they had attached little or no weight to the statements from witnesses of the appellant. Nothing is said about difficulties mentioned in evidence by the witnesses. As it was clearly incumbent on the magistrates at least to advert in broad terms to those matters that they took into account, it is fair to conclude in the circumstances that they proceeded upon the basis that there was no reliable evidence of actual problems linked to the premises either under the old licence or under the new re-

vised licence. This was in line with the oral evidence of Police Sergeant Yehya (as recorded in the rather truncated notes of the legal advisor):

'1 reported incident for the site. No other incidents or complaints have been received. There are none in my file. There are no incidents we can directly link to the Saughall Hotel since previously open. There have been incidents locally but not linked to these premises.'

**[47]** To judge by the reasons therefore, what led the magistrates to impose restricted hours of operation was their forecast as to what would occur in the future in association with the premises, notwithstanding the absence of reliable evidence of past problems. The first interested party observes that the manager of the premises had given evidence that he intended in the summer to 'make hay while the sun shines' and submits, correctly in my view, that the magistrates were entitled to take this apparent change of emphasis into account. However, Mr Flood further submits that the evidence of what had happened in the winter months was therefore of 'little evidential value' in determining what was likely to happen in the future and I cannot wholly agree with him about this. Undoubtedly the fact that the claimant intended in future to make more use of the extended hours reduced the value of the premises' past record as a predictor of the future but it could not, in my view, be completely discarded by the magistrates. They still had to take into account that there had been extended hours for some months without apparent problems.

**[48]** It is plain that the magistrates' particular concern was 'migration' rather than problems generated by those coming directly to the premises for their evening out. Under the heading 'The Four Licensing Objectives', they say that they accept that there have been no formal or recorded complaints against the premises 'but feel that because of the concept of migration that public

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nuisance and crime and disorder would be an inevitable consequence of leaving the hours as granted by the Local Authority'. Under the heading 'Migration/Zoning' they begin:

'The Saughall Hotel due to its location and the fact that a number of license premises in the surrounding area have reduced hours to that of the Saughall Hotel we believe that as a consequence of this would be that customers would migrate from these premises to the Saughall Hotel [sic].'

and end:

'We appreciate that the extended hours have been in operation for several months without any incidents but have taken into consideration this was during the Winter months and inevitable numbers will increase in the Summer causing nuisance/criminality.'

**[49]** They reiterate their concern under the heading 'Nuisance (Existing/Anticipated)' saying that they 'feel that public nuisance will be inevitable'.

**[50]** The claimant complains that the magistrates' treatment of the issue of 'migration' was fundamentally flawed on a number of grounds.

**[51]** Firstly, it submits that there was no evidence on which the magistrates could find that customers *would* come to the premises when other premises in the vicinity closed or cause trouble and their concerns were no more than inappropriate speculation. The claimant's position was that there was no evidence of migration to their premises. There were no recorded complaints of any kind about the premises let alone specifically about migration. Ms Lesley Spencer who lives opposite the premises and is the Secretary of the Saughall

Massie Conservation Society gave evidence of her fear that customers would migrate but said that she did not think there had been any migration.

[52] Apart from their own local knowledge, the only material on which the magistrates could possibly have formed their views about migration was what Police Sergeant Yehya said in evidence. According to the legal advisor's notes, whilst being cross-examined by Mr Kirwan, the sergeant gave evidence about the other licensed premises operating in the vicinity (which I have seen marked on a local map and which were within walking distance of the premises) and their closing hours and said that there were three assaults each week at one of the premises. The legal advisor records that he also said:

'We have staggered closing. This could cause problems it has the potential to cause difficulties in the area. I have a list of considerations but none would rank as high as crime, not even noise. No complaints have been made to me even regarding noise. One concern was dispersal. We gave people one hour to disperse and therefore reduced from 2.00am to 1.00am. 1.00am closing at 2. 280 people leaving premises. Other premises subject to high levels of crime *migration not an issue.*' (My emphasis.)

[53] I appreciate that this evidence acknowledged that staggered closing *could* cause problems but, had migration been a significant issue as opposed to a mere possibility, one can, I think, assume that the police would have made representations on that score, particularly given that they had plainly considered the impact of trading hours specifically and *had* initially objected to the even longer hours originally proposed by the claimant. It is noteworthy that even when they were in opposition to the plans, it was never on the basis of migration of disruptive characters from other licensed premises and always

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simply on the basis of late noise from ordinary customers of the premises dispersing. The absence of police objections before either the licensing authority or the magistrates' court seems to have surprised the magistrates who said so in their reasons, commenting:

'We were surprised that the Police originally objected to the application but withdrew that objection after a slight variation of the terms.'

In so saying, they convey, in my view, not only their surprise about the police approach but also their disagreement with it.

[54] It was not open to the magistrates, in my view, to elevate what Sergeant Yehya said in the witness box to evidence that a problem with migration could reasonably be expected, nor do they say anything in their reasons which suggests that they did rely on his evidence in this way. The only concerns about migration were therefore the magistrates' own with perhaps some fears expressed by local residents though not on the basis of firm historical examples of migration to the premises.

[55] It is clear from the guidance that drawing on local knowledge, at least the local knowledge of local licensing authorities, is an important feature of the Act's approach. There can be little doubt that local magistrates are also entitled to take into account their own knowledge but, in my judgment, they must measure their own views against the evidence presented to them. In some cases, the evidence will require them to adjust their own impression. This is particularly likely to be so where it is given by a responsible authority such as the police. They must also scrutinise their own anxieties about matters such as noise and other types of public nuisance particularly carefully if the responsible authorities raise no objections on these grounds. These magistrates did recognise the absence of police objections which caused them surprise and they chose to differ from the police in reliance on their own views. The claimant submits that in so doing they departed into the realms of impermissible speculation not only in concluding that there would be migration

but also in concluding that in this case it would generate nuisance and disorder. The first interested party is correct in submitting that the guidance accepts a link between migration and a potential breach of the licensing objectives but it is also clear from the guidance that each case must be decided on its individual facts so the magistrates could not simply assume that if people came from other premises, there would be trouble.

**[56]** The claimant complains that the magistrates' treatment of the migration issue also flies in the face of the guidance because firstly it was an improper attempt to implement zoning and secondly it ignored the general principle of longer opening hours.

**[57]** Zoning is the setting of fixed trading hours within a designated area so that all the pubs in a given area have similar trading hours. The problem created by it, as demonstrated by experience in Scotland, is that people move across zoning boundaries in search of pubs opening later and that causes disorder and disturbance. The guidance says (at para 6.8):

'... The licensing authority should consider restricting the hours of trading only where this is necessary because of the potential impact on the promotion of the licensing objectives from fixed and artificially-early closing times.'

It stresses that above all, licensing authorities should not fix predetermined closing times for particular areas.

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**[58]** I am not convinced that the magistrates' limiting of the claimant's operational hours can properly be described as implementing zoning which, in my view, is a term that is more appropriate to describe a general policy imposed by a licensing authority for a defined area than an individual decision of this type, albeit made with reference to the opening hours of other premises in the vicinity and having the effect of imposing the same hours as those premises.

**[59]** What has more weight, however, is the claimant's submission that the magistrates failed to give proper weight to the general principle of later opening hours and to the intention that the approach to licensing under the Act would be to grant the hours sought for the premises unless it was necessary to modify them in pursuit of the licensing objectives. The reasons include a heading 'Flexibility' under which the magistrates say simply: 'We have considered the concept of Flexibility.' In so saying, they may be referring to the sort of flexibility to which reference is made, for example, in para 6.6 of the guidance (see [44], above) but their shorthand does not enable one to know to what conclusions their consideration of the concept led them in this case nor whether they had reliably in mind that the starting point should be that limitations should not be imposed upon the licence sought unless necessary to promote the licensing objectives rather than that the licensing authority or the court should form its own view of what was necessary for the premises and only grant that.

**[60]** The claimant was seeking to have the freedom to open later on certain occasions when the trade justified it or, as the magistrates put it, 'the application for extended hours was to allow *flexibility* to open later on certain occasions'. As the first interested party would submit, the magistrates may have inferred from Mr Miller's comment about making hay that the premises would *often* be open late rather than this happening only infrequently in accordance with the picture presented to the licensing authority. If this was their inference, however, it is odd that they considered that the claimant could deal with the position by applying for a temporary certificate because this would have allowed the premises to open later on only a limited number of occasions. They make no express finding in their reasons as to the frequency on which they considered the claimant intended to keep the premises open late. This was material not only to the degree of disturbance that might be caused generally by late opening but also specifically to the issue of whether there would be migration. It would seem unlikely that customers from nearby pubs would bother to walk or even drive to the Saughall Hotel in search of another drink at the end of their evenings unless the Saughall Hotel was open late sufficiently frequently to lead them to a reasonable expectation that their journey would be worthwhile.

[61] The magistrates' comment about the temporary certificate also seems to me to be an example of a failure by them to adopt the lighter approach that the Act dictated and to allow flexibility to those operating licensed premises unless the licensing objectives required otherwise. Temporary certificates would be a cumbersome and restricted means of achieving flexibility, not responsive to the day-to-day fluctuations in business, only available a limited number of times, and not in line with the philosophy of the Act.

[62] There is no consideration in the magistrates' decision of whether the imposition of conditions to control noise or other nuisance (which were going to be imposed) would be sufficient to promote the licensing objectives without

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reducing the operating hours of the premises. Given that the Act dictates that only such steps as are necessary should be taken with regard to the variation of the terms of operation sought, such consideration was required.

### **My overall conclusions**

[63] It would be wrong, in my judgment, to say that the magistrates failed to take account of the licensing objectives. At the outset of their reasons, they correctly identify those which are relevant. Similarly, as the first interested party submits, whilst they did not *articulate* that the curtailment of the hours sought was 'necessary' to promote those objectives, it is implied in their decision that they did take this view and it can also be inferred from their comment that because of the concept of migration, public nuisance and crime and disorder would be 'an inevitable consequence' of leaving the hours as granted by the local authority. However, in my view their approach to what was 'necessary' was coloured by a failure to take proper account of the changed approach to licensing introduced by the Act. Had they had proper regard to the Act and the guidance, they would have approached the matter with a greater reluctance to impose regulation and would have looked for real evidence that it was required in the circumstances of the case. Their conclusion that it was so required on the basis of a risk of migration from other premises in the vicinity was not one to which a properly directed bench could have come. The fact that the police did not oppose the hours sought on this basis should have weighed very heavily with them whereas, in fact, they appear to have dismissed the police view because it did not agree with their own. They should also have considered specifically the question of precisely how frequently the premises would be likely to be open late and made findings about it. They would then have been able to compare this to the winter opening pattern in relation to which they accepted there had been no complaints and draw proper conclusions as to the extent to which the summer months would be likely to differ from the winter picture. Having formed a clear view of how frequently late opening could be anticipated, they would also have been able to draw more reliable conclusions about the willingness of customers from further afield to migrate to Saughall Massie. They proceeded without proper evidence and gave their own views excessive weight and their resulting decision limited the hours of operation of the premises without it having been established that it was necessary to do so to promote the licensing objectives. In all the circumstances, their decision was unlawful and it must be quashed.

[64] I have said little so far about what appears in the magistrates' response for the judicial review proceedings. The various documents comprising the response did nothing to allay my concerns about the magistrates' decision. Indeed quite a lot of what was said reinforced my view that the magistrates had largely ignored the evidence and imposed their own views. They refer in their response to incidents about which the residents had given evidence and to the residents not having complained formally for various reasons, for example because it was Christmas or because there was thought to be no point. If the magistrates considered these matters to be relevant, it was incumbent on them to say so clearly in their reasons whereas they there recorded their acceptance that there had been no formal or recorded complaints, that the extended hours had been in operation for several months without incidents and that they had attached little or no weight to the statements of the witnesses of the appellant. They also refer extensively in their response to their thoughts on migration,

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including that people may come from further afield than the pubs in the vicinity in cars. Particularly concerning is that they refer repeatedly to a perceived issue over police resources which is not something that, as far as I can see, had been raised by Sergeant Yehya or explored with him in evidence. Mr Beere says in his statement for example, 'there is also the question of Police resources and their ability to effectively police this area especially at weekends with already stretched resources being deployed in Hoylake'.

**[65]** Reference is made in the response documents to the court feeling that the brewery's proposed opening hours contradicted the acceptable activities of a family pub and that the Saughall Hotel is 'a village pub and not a night spot in the centre of town'. For the court to take matters such as this into account seems to me to be an interference with the commercial freedom of the premises of a type that was not permissible under the Act unless it was necessary to promote the licensing objectives. I appreciate that the magistrates' response seems to suggest that they feared that a different type of customer was being courted or would invite themselves once it got too late for families but this does not seem to have been founded on anything that was given in evidence so was really not much more than speculation.

**[66]** Mr Beere's statement ends with a reference to the brewery wanting to make hay while the sun shines, of which he says: 'I believe that this statement was indicative of the Brewery's attitude to local residents and to the general management of the premises.' Given that problems with or in the vicinity of the premises had been almost non-existent and that the magistrates had not seen fit to make reference in their reasons to any difficulties caused by the hotel, it is hard to see how this belief could be justified but it does perhaps exemplify the approach of the magistrates.

**[67]** I have considered quite separately the argument as to whether the hours of opening can be regulated as part of the licensing of premises as opposed to the hours during which licensable activities take place. It was suggested during argument that there was no power to regulate the time by which people must leave the premises. I cannot agree with this. Clearly, keeping premises open (as opposed to providing entertainment or supplying alcohol there) is not a licensable activity as such. However, the operating schedule which must be supplied with an application for a premises licence must include a statement of the matters set out in s 17(4) and these include not only the times when it is proposed that the licensable activities are to take place but also 'any other times during which it is proposed that the premises are to be open to the public'. On a new grant of a premises licence, where there are no representations the licensing authority has to grant the application subject only to such conditions as are consistent with the operating schedule. I see no reason why, if it is necessary to promote the licensing objectives, these conditions should not include a provision requiring the premises to be shut by the time that is specified in the operating schedule. If representations are made and the licensing authority ultimately grants the application, it can depart from the terms set out in the operating schedule when imposing conditions in so far as this is necessary for the promotion of the licensing objectives. It must follow that it can impose an earlier time for the premises to be locked up than the applicant wished and specified in its operating schedule. It is important to keep in mind in this regard that the role of the licensing authority and, if there is an appeal, the court, has two dimensions: the fundamental task is to license activities which require a licence and the associated task is to consider what, if any, conditions are imposed on the applicant to ensure the promotion of the

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licensing objectives. A requirement that the premises close at a particular time seems to me to be a condition just like any other, such as keeping doors and windows closed to prevent noise. I see no reason why a condition of closing up the premises at a particular time should not therefore be imposed where controlling the hours of the licensable activities on the premises (and such other conditions as may be imposed) is not sufficient to promote the licensing objectives.

### **The costs argument**

[68] In the light of my conclusion that the magistrates' decision is unlawful and therefore must be quashed, it is not appropriate for me to consider the arguments in relation to their costs order further. The appellants had given an undertaking to the licensing authority that they would not seek costs against the licensing authority and they sought the entirety of their costs of the appeal from the claimant. The magistrates granted that order and the claimant submits that that was not an order that was open to them. Whatever the merits of that argument, the magistrates' order in relation to costs cannot now stand. The basic foundation for the order for costs was that the appeal had succeeded and the claimant had lost. That position has now been overturned and the costs order must go along with the magistrates' main decision. The magistrates would have had no reason to grant costs against the claimant if the appeal had been dismissed.

*Application allowed.*

Karen Widdicombe     Solicitor.