



Walsall Council

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 24th November 2005. The current premises licence is given as **Appendix 1**.
- 3.2 The premises licence was transferred over to Mr Hawa on the 13th 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

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