



Additional Information from Objector (Walsall Council Public Health)

Licensing Sub – Committee

27 January 2025 at 10:30am

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

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From: Alex Tomlinson <[REDACTED]>
Sent: 08 January 2025 15:47
To: Licensing <[REDACTED]>
Cc: Vicki Caress <[REDACTED]>
Subject: Burger King, The Keyway Retail Park, Willenhall. WV13 2QU PCX:000073000002969

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Alex Tomlinson | Solicitor

Poppleston Allen

[REDACTED]

W: www.popall.co.uk

Nottingham Office: 37 Stoney Street, The Lace Market, Nottingham, NG1 1LS

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Good afternoon Andrew,

I hope you are well and have a lovely time during the holidays.

I note we have received an objection in relation to the above application from Public Health.

Please find below our response in relation to this. Of course, we are more than happy to discuss this with yourselves and Public Health.

My client notes the concerns raised by the Council's Public Health body in their representation, however much of the content relates to issues of public health, which is not one of the licensing objectives. The Licensing Authority will be aware that in accordance with s.18 of the Licensing Act 2003, they can only consider relevant representations that are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives when determining a premises licence application.

As public health is not a licensing objective, we respectfully submit that the contents under the headings "protecting children from harm" and "preventing public safety" are not relevant to the application. Nonetheless, we have provided some comments below on these points to the extent that it may benefit the Council. We have also responded to the Public Nuisance matter.

Protection of Children from Harm

This application seeks approval for Burger King at Keyway Retail Park to operate its drive-thru service between the hours of 23:00 and 05:00. During this time, the premises will be accessible exclusively to customers in vehicles. As such, we believe this will not negatively affect the protection of children from harm. Any children (under 17 years old) who may access the drive-thru would do so only if accompanied by an adult.

The premises are located within a large retail park, with the main access point from the A463 (Keyway Junction). Given the nature of the site, its location, the hours applied for and conditions proposed, we submit that it is unrealistic to expect that more children would access the premises as a result of this application without adult supervision, if at all.

Public Safety

In accordance with S182 Guidance of the Licensing Act (Paragraph 2.8), the concept of Public Safety within the scope of the Licensing Act "concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation." The representation refers to health of residents due to potential air pollution. As matters of public health cannot be considered under the public safety licensing objective, we submit that this is not relevant to the application.

In any event, there is no evidence to suggest that the extension of the premises' opening hours will lead to increased air pollution in the surrounding area.

Public Nuisance

The proposed conditions allow the responsible authorities to take action against the BKUK Group should any nuisance arise from the premises. It is not a requirement to submit an independent noise assessment as part of the application.

The premises are situated within a retail park, located adjacent to the A463, with the nearest residential property being over 150 metres away. Based on the distance to the nearest residents and the location of the A463, we submit that the operation of this premises during the proposed hours is extremely unlikely to cause noise nuisance to residents as it is unlikely to generate noise above the existing ambient noise from road traffic.

Furthermore, I note that the Environmental Health Authority, being the local expert on matters of noise and public nuisance, has raised no objections to the application in relation to noise.

Kind regards
Alex

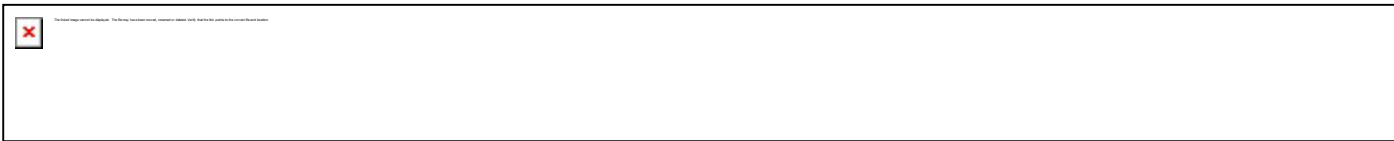
From: Andrew Eardley <[REDACTED]> **On Behalf Of** Licensing
Sent: 03 January 2025 11:02
To: Vicki Caress <[REDACTED]>
Subject: RE: New Premises licence - Burger King, The Keyway Retail Park, Willenhall. WV13 2QU
PCX:000064000011343

Dear Ms Caress,

Thankyou for your e-mail. I can confirm we have only received the one objection. The hearing will be held on the 27/01/2025 and you will receive email correspondence as to the details.

Regards,

Andrew Eardley
Licensing
Walsall Council
www.walsall.gov.uk



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From: Vicki Caress <[REDACTED]>
Sent: 02 January 2025 09:37
To: Licensing <[REDACTED]>
Subject: RE: New Premises licence - Burger King, The Keyway Retail Park, Willenhall. WV13 2QU
PCX:000064000011343

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Morning Muhammed

Happy New Year.

Thank you for your e-mail and we shall take a look at the representation.

Can you please confirm if this is the only objection received to the application.

Many thanks
Vicki



Vicki Caress | Senior Paralegal

Poppleston Allen

E:

[REDACTED]

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From: Sayful Alom [REDACTED] **On Behalf Of** Licensing
Sent: 30 December 2024 11:45
To: Vicki Caress <[REDACTED]>
Subject: New Premises licence - Burger King, The Keyway Retail Park, Willenhall. WV13 2QU
Importance: High

Good Morning,

I hope this email finds you well. I am forwarding the attached representation received from Public Health concerning the premises licence application for Burger King at The Keyway Retail Park, Willenhall. Please be advised that the last date for representations was the 24th of December 2024. Consequently, the last date for a hearing would be the 27th of January 2024.

Thank you for your attention to this matter.

Kind Regards

Muhammed Sayful Alom
Licensing Team Leader
Walsall Council
www.walsall.gov.uk



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From: Hollie-Mae Janes [REDACTED]
Sent: 17 December 2024 10:52
To: Licensing [REDACTED]
Cc: PHBusinessSupport [REDACTED] Andrew Eardley
[REDACTED]

Subject: RE: Consultation for New Premises licence - Burger King, The Keyway Retail Park, Willenhall.
WV13 2QU

Hi Licensing,

Please find attached our representation regarding the premises below.

Best wishes,

Hollie

Hollie-Mae Janes (she/her)
Wider-Determinants Lead
Public Health Development Officer
[REDACTED]
Walsall Council
www.walsall.gov.uk

I work flexibly. It suits me to email you at this time, but I don't expect a reply outside of your working hours.



Date: 20th January 2025

Please find a response from Walsall Public Health which is to be shared with Poppleston Allen.

Good afternoon,

Public Health note with thanks your correspondence dated 8th January 2025.

This letter will outline the following;

1. A response to your correspondence dated 8th January 2025
2. A retraction of our objections in relation to public safety and preventing public nuisance
3. Additional evidence

A response to your correspondence dated 8th January 2025

Walsall Public Health understand that public health in and of itself is not a licensing objective. However, the DPH has a statutory responsibility for their local authority's public health response as a responsible authority under the Licensing Act 2003. The licensing objectives are;

- Preventing crime and disorder
- Public safety
- Preventing public nuisance
- Protecting children from harm

Public Health's representation focused on public safety, preventing public nuisance, and protecting children from harm. Protecting children from harm can include discussing health harms.

The application is for a Late-Night Refreshment license (to operate a drive-thru between the hours of 23:00 and 05:00), meaning Burger King can sell products 24hrs a day. This does not mean that children will be unaffected by this simply because most children do not drive (unless 17 years of age). The response from Poppleston Allen on the 8th January politely refutes our representation on the basis of relevancy and validity, stating children will be unable to access the drive-thru as most children do not drive. However, this is not the only mechanism through which the proposed licensed premises can negatively affect the children of the local ward (Willenhall South).

A retraction of our objections in relation to public safety and preventing public nuisance

We would like to retract our objections in relation to public safety and preventing public nuisance. We still consider our previous comments to be of concern, but licensing legislation does not support us to make these representations in this way.

Date: 20th January 2025

However, this application to increase Burger King’s operating hours is of concern and does not support the licensing objective to protect children from harm.

Additional evidence

1. Out of the 151 local authorities across England, Walsall ranks the 9th worst for childhood obesity (year 6 obesity prevalence) ¹.
2. Out of the 14 local authorities in the West Midlands, Walsall ranks 3rd worst for childhood obesity (year 6 obesity prevalence) ¹.
3. Willenhall South (the ward where the Burger King resides) has one of the highest childhood obesity rates in Walsall ².
4. The table below shows child obesity prevalence in the wards in the local vicinity to the Burger King (NCMP Data 3 year average 21/22 – 23/24) ². These are some of the boroughs most deprived areas.

% Children living with overweight or obesity			
Ward	Approx distance from Burger King	Reception Data 3yr 21/22-23/24	Year 6 Data 3yr 21/22-23/24
Bilston East (Wolverhampton)	5 minute drive (2 miles)	28.7	51
Bilston North (Wolverhampton)	5 minute drive (2 miles)	27.8	50.5
Willenhall South	Immediate vicinity	27.8	47.7
Bentley and Darlaston North	3-5 minute drive (1-2.5 miles)	31.5	47.3
Birchills Leamore	7 minute drive (2.5 miles)	25.2	46.7
Darlaston South	5 minute drive (1.1 miles)	25.5	46.4
Pleck	10 minute drive (2.5 miles)	22.2	45.8
Short Heath	10 minute drive (2.3 miles)	30	43.2
Willenhall North	5 minute drive (1.6 miles)	21.4	42.9
Walsall 23/24		24.7	41.6
West Mids 23/24		23.4	38.4

England 23/24		22.1	35.8
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- Using The Councils planning database, there are 76 places selling hot food within a 1 mile radius of the Burger King.
- Using The Councils licensing database, there are 6 establishments selling hot food after 11pm that are within a 10-minute drive of the Burger King. 5 of them already sell burgers.
- Examples of Burger Kings marketing (UK) ³.

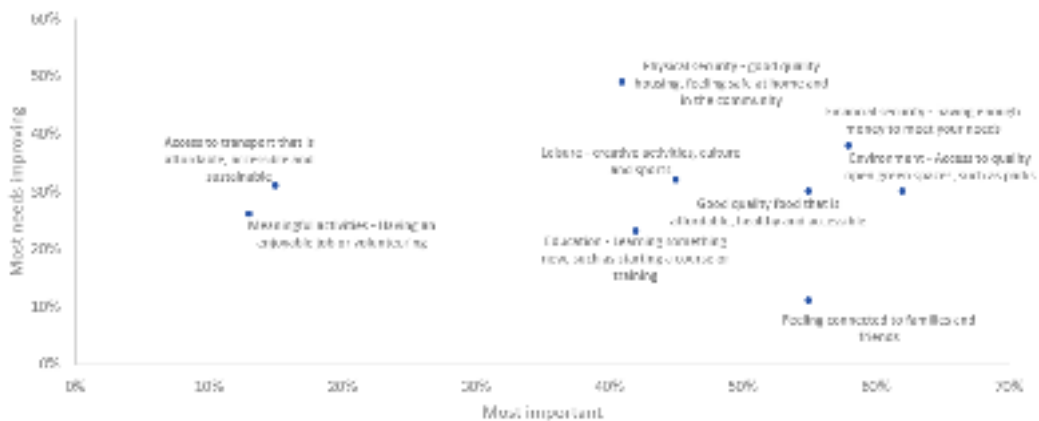


- Examples of Burger King's local advertising in Walsall



9. A consultancy firm (BMG) conducted public consultation to help inform and shape the Walsall 2040 vision for the borough. A postal survey was conducted. This fieldwork that took place summer of 2022 revealed that ‘good quality food that is affordable, healthy and accessible’ was one of the top 3 factors that was most important to our residents. Out of the North, South, East and West of the borough, the South of the borough thought this needed the most improvement. The local vicinity of the Burger King is in the south / south west of the borough.

Importance and improvement needed



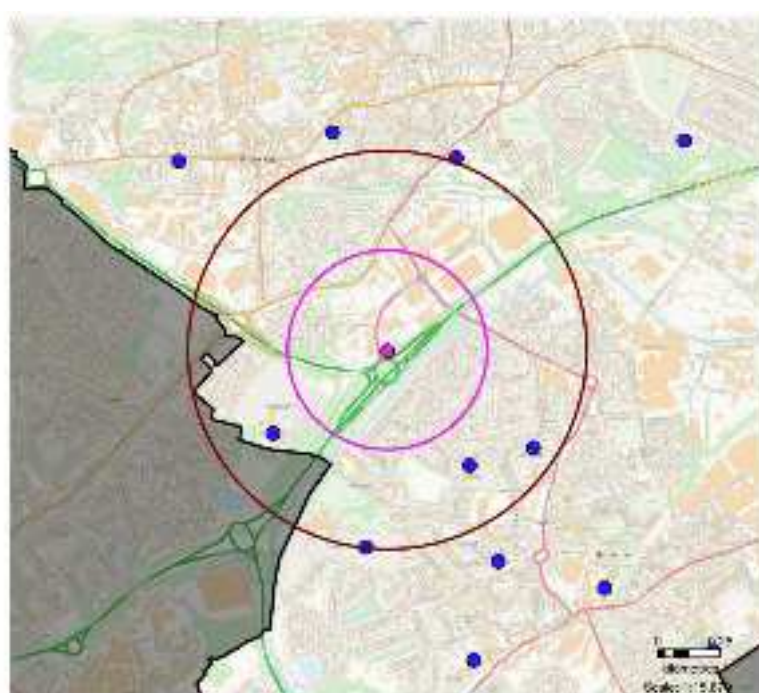
Source: Walsall 2040 Vision Public Consultation
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 Walsall 2040 Vision Public Consultation

10. Whilst we recognise this is a licensing matter (i.e extension of opening hours – Late Night Refreshment license), the National Planning Policy Framework states that;

- a. Planning policies and decisions should aim to achieve healthy, inclusive and safe places which enable and support healthy lives,

through both promoting good health and preventing ill-health, especially where this would address identified local health and well-being needs and reduce health inequalities between the most and least deprived communities – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling ⁴.

- b. Local planning authorities should refuse applications for hot food takeaways and fast-food outlets:
 - i. within walking distance of schools and other places where children and young people congregate, unless the location is within a designated town centre; or
 - ii. in locations where there is evidence that a concentration of such uses is having an adverse impact on local health, pollution or anti-social ⁴.
- c. A map generated using internal planning data to show the schools within walking distance of the Burger King. From a health perspective, the location of Burger King is in one of our highest prevalence wards for obesity.



- Legend:
- Site Location
 - Schools
 - 400m Radius
 - 800m Radius



Map: Crown copyright © and database rights 2025 Distance Server A2000011014

11. This Burger King premise is very close to the Wolverhampton boundary. Wolverhampton Council Public Health (Director of Public Health, John Denley) supports our view that this Burger King being accessible 24hrs day will negatively impact children in Wolverhampton.

12. Data from Walsall Councils Highways Team shows that the average annual daily flow (AADF - the number of vehicles that travel past the count point [in both directions] on an average day of the year) for nearby count points is as follows:
 - a. A463 Black Country Route 2023 AADF = 43,455 motor vehicles – i.e the adjacent strategic route carries 43,000 vehicles per day. This could mean that between the hours of 11pm and 5am, that 10,750 vehicles may directly pass through this route.

 - b. Armstrong Way 2023 AADF = 12,097 motor vehicles – i.e 12,000 vehicles each day pass the Burger King on Armstrong Way. This could mean that between the hours of 11pm and 5am, that 3000 vehicles may directly pass the Burger King.

References

1. Office for Health Improvement and Disparities (2024) Local Authority Health Profiles. Available at: [Local Authority Health Profiles - Data | Fingertips | Department of Health and Social Care](#) (Accessed: 16th January 2025)
2. Office for Health Improvement and Disparities (2024) Public Health Data for Small Geographical Areas. Available at: [Local health, public health data for small geographic areas - Data | Fingertips | Department of Health and Social Care](#) (Accessed: 16th January 2025)
3. Creative Review, Eliza Williams (26/09/24). Creative Review.. Available at: URL [Should Burger King's new campaign be banned?](#) Accessed 17th January 2025).
4. Ministry of Housing, Communities and Local Government, (2024). *National Planning Policy Framework*. England, p.28, para 97 and 96.
- 5.