

REPORT FOR: LICENSING PANEL

Date:	21 February 2017
Subject:	Application for a variation to the premises licence for MIR Food Centre 2, 88 – 92 High Street, Wealdstone, Harrow HA3 7AH
Responsible Officer:	Tom McCourt - Corporate Director, Community Directorate
Exempt:	No
Enclosures:	Current Premises Licence including plan (appendix 1) Location (GIS) Map (appendix 2) Image of premises (appendix 3) Police representations (appendix 4) Additional police information (appx 4a) Other parties representations (appendix 5) Operating schedule (appendix 6)

Section 1 – Summary

An application has been received to vary the premises licence for MIR Food Centre 2, 88 – 92 High Street, Wealdstone HA3 7AH to allow the sale of alcohol for consumption off the premises 24 hours a day. Representations have been received from the police, a councillor and a representative of a residents' association.

Section 2 – Report

- 2.1 The premises licence holder, Mr Yusuf Cagin, has applied to vary the premises licence for MIR Food Centre 2, 88 – 92 High Street, Wealdstone, HA3 7AH. The existing premises licence and plan is set out at appendix 1. An image of the premises and a location map are set out at appendices 2 and 3.
- 2.2 Licensable activities
The tables below set out the current licensable activities and the variations being sought.

Current licence			Application sought	
Day	Hours open to public	Alcohol sales (on the premises)	Hours open to public	Alcohol sales (on the premises)
Monday	Not specified	0800 – 2300	0000 - 0000	0000 - 0000
Tuesday	Not specified	0800 – 2300	0000 - 0000	0000 - 0000
Wednesday	Not specified	0800 – 2300	0000 - 0000	0000 - 0000
Thursday	Not specified	0800 – 2300	0000 - 0000	0000 - 0000
Friday	Not specified	0800 – 2300	0000 - 0000	0000 - 0000
Saturday	Not specified	0800 – 2300	0000 - 0000	0000 - 0000
Sunday	Not specified	1000 – 2230	0000 - 0000	0000 - 0000

Existing seasonal variations:

- a. On Christmas Day, 1200 to 1500 hours, and 1900 to 2230 hours
- b. On Good Friday, 0800 to 2230 hours

2.3 Description of premises

The premises (formerly known as Londis) are a ground floor convenience/grocery store, located in a retail shopping parade on Wealdstone High Street at the junction of Locket Road and George Gange Way. The premises have been recently refurbished.

- 2.5 The locality is within a Designated Public Places Protection area¹ that includes restrictions on alcohol consumption. This does not make the consumption of alcohol in public spaces illegal, but creates an offence of failing to surrender containers of alcohol when requested to by a police officer, police community support officer or other accredited person.

2.6 Licensing history

The premises have been licensed since June 1971 under a justices' liquor licence and continuously licensed since November 2005 under the Licensing Act 2003. The premises licence was transferred to the existing premises licence holder on 11 November 2016.

2.7 Designated premises supervisor

Mr Yusuf Gagin (also the premises licence holder) since 11 November 2016

2.8 Details of application

Received: 1 December 2016

Newspaper advertisement: 8 December 2016 (Harrow Times)

Closing date for representations: 29 December 2016

2.9 Representations

The Metropolitan Police Service has submitted representations on the grounds of preventing crime and disorder (appendix 4).

- 2.10 Representations have also been submitted by Councillor O'Dell as a ward councillor on the grounds of the prevention of crime and disorder, prevention of public nuisance and public safety, and by June Skidmore on behalf of Wealdstone Active Community and as a local resident on crime prevention and public nuisance grounds (appendix 5).

¹ Under section 13(2), Criminal Justice and Police Act 2001

2.11 Operating schedule and conditions

Members will be aware that an operating schedule forms part of the licensing process. This document outlines what activities are proposed, the opening hours, and how the activities will be managed particularly in respect of the licensing objectives.

2.12 The Panel's attention is directed towards paragraphs 8.33 – 8.39 of the statutory guidance issued under the Act that sets out matters that ought to be considered by an applicant when drafting their operating schedule. The applicant has noted that the premises are within a Designated Public Place Order area.

2.13 The most critical part of the operating schedule are the steps taken by the applicant to promote the licensing objectives. Applicants are always reminded to take careful consideration as to what is entered in this section as whatever is proposed will be transferred into conditions on the licence. The Panel's discretion is engaged in the light of relevant representations to impose conditions that are appropriate to promote the licensing objectives. Conditions should be tailored to the size, type, location, characteristics and activities at the premises, and the Panel should be aware of any indirect costs that may arise from the imposition of conditions.

2.14 Appendix 6 sets out the applicant's proposed operating schedule. There are not currently any conditions on the licence other than the mandatory conditions relating to alcohol sales. If the variation is granted, the following conditions would be included from the operating schedule:

(1) (a) The Premises Licence Holder or Designated Premises Holder shall install and maintain a comprehensive CCTV system to the satisfaction of an authorised employee of Metropolitan Police. All entry and exit points must be covered enabling frontal identification of every person entering.

(b) The Designated Premises Licence Holder shall ensure that the CCTV system shall continually record whilst the Premises is open for licensable activities and during all times when customers remain on the Premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping.

(c) Recordings shall be made available immediately upon the request of the Police or authorised officer of the Licensing Authority providing such requests are in connection with the prevention or detection of crime. Recordings are to be supplied to in the form of digital download burned onto a DVD or CD disc or portable drives.

(d) A staff member from the Premises who is conversant with the operation of the CCTV system shall be on the Premises at all times when the Premises is open to the public. This staff member shall be able to show Police or an authorised officer to the licensing authority recent data or footage with the minimum delay when so requested.

(e) All faults/defects in the CCTV system must be reported to the Metropolitan Police immediately the fault is discovered. The notification must be made to the Metropolitan Police telephone number 101 and a log number obtained from the Police and recorded in the incident book. The Harrow Police Licensing Officer must also be notified as soon as reasonably practicable.

(f) All faults with the CCTV system shall be repaired as soon as possible and in any case within two working days after which time, if the system is still inoperative no

licensable activities shall take place without the agreement of Police Licensing Officer and Licensing Authority until the fault is rectified.

(2) The age verification policy shall apply to persons who appear to be under the age of 25 years old ("Challenge 25 policy"). A record of age related refusals of sale will be kept and will be made available to officers of the Metropolitan Police and Licensing Authority immediately upon request.

(3) Prominent, clear and legible notices shall be displayed at the entrances/exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly, to dispose of litter responsibly, not to loiter outside the shop, and not to drink outside in the street as they are within an area subject to a Designated Public Places Order.

(4) All staff shall receive training for role on induction and at regular intervals of six months thereafter. Training will include identifying persons under 25, making a challenge, acceptable proof of age, making and recording a refusal, avoiding conflict and responsible alcohol trading.

(5) A record of any incident that takes place at the premises which would undermine one or more of the four licensing objectives to be kept at the premises. The record will be made available to officers of the Metropolitan Police and Licensing Authority immediately upon request and will include (a) all crimes reported to the venue; (b) all ejection of patrons; (c) any complaints received regarding crime and disorder; (d) any incidents of disorder; (e) seizures of drugs or offensive weapons; (f) any refusal of the sale of alcohol.

(6) A refusals register will be maintained at the premises for not less than 12 months.

(7) A written authority from the DPS will be kept at the premises where he authorises any member of staff to sell alcohol on his behalf. This authority will be produced immediately upon the request of an officer of the police or the licensing authority.

(8) Deliveries to the premises shall only be made during normal working hours.

2.15 The operating schedule also contains proposals in relation to fire safety measures which by virtue of the Regulatory Reform (Fire Safety) Order 2005 SI 2005 No 1541 cannot be included as conditions.

2.16 When imposing conditions relating to CCTV the Panel should bear in mind the Information Commissioner's guidance² that such conditions should only be imposed where it is justified to do so and in order to meet the licensing objectives.

2.17 The applicant has proposed a condition (at paragraph 2.14(8), above) that deliveries to the premises shall only be made during normal working hours. As the premises may potentially be open for 24 hours, should the Panel be minded to grant the application, the Panel might wish to define what is meant by "normal working hours".

2.18 If the Panel is minded to grant the application either wholly or in part it may consider imposing further conditions to particularly address any potential difficulties from alcohol being purchased by street drinkers and/or in the early hours of the morning. It is

² https://ico.org.uk/media/for-organisations/documents/1565/ico_view_on_cctv_in_pubs.pdf

recommended that those conditions are first discussed with all parties. Officers are able to suggest appropriate conditions for consideration if required.

2.19 The Panel has the discretion to add to or modify these conditions in light of the representations where it is appropriate to do so to promote the licensing objectives and subject to the tests in paragraph 2.13 above.

2.20 Officers' observations

The Panel will be aware that if it resolves not to grant the application the premises licence holder will still benefit from the existing hours set out in paragraph 2.2.

2.21 Councillor O'Dell's representation states the local authority no longer has late-night nuisance patrols to effectively monitor licensable activities. Whilst the local authority does not have an out-of-hours nuisance service the licensing authority's officers do conduct premises inspections at all times of the day following a change of DPS; a licence variation; or complaints concerning the premises.

2.22 The representation from Wealdstone Active Community refers to the reputation of the area being affected if the application is granted, and whether a planning application has been made for the canopy and alterations to the premises. Neither of those assertions are relevant considerations for the Panel to take into account.

2.23 It is for the Panel to decide how much weight to place on those representations after reading them and hearing from the applicant and those making representations.

2.24 The statutory guidance states (inter alia) the below in respect of public nuisance:

2.15 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

2.16 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 15). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive

2.17 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation

adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.

2.18 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.

2.19 [Refers solely to nuisance from light]

2.20 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

2.25 The Panel is reminded of the guidance in relation to accepting police evidence:

9.12 In their role as a responsible authority, the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective. The police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective, but may also be able to make relevant representations with regard to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

2.26 The statutory guidance in relation to trading hours states:

10.13 The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions about the hours during which premises can conduct licensable activities as part of the

implementation of its licensing policy statement. Licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

10.14 Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.

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

2.27 These above comments are to assist the Panel in its decision-making process based on the evidence before it and the legislative requirements.

2.28 Licensing policy

Under paragraph 13.6 of the authority's licensing policy reasonable proof is required to verify that a signatory purported to be on behalf of a group, society or association is genuinely speaking on behalf of the members of that group, such as meeting minutes of a resolution. The Panel may wish to satisfy themselves that the representation from Wealdstone Active Community has genuinely been made on their behalf. The writer may nevertheless still be treated as an individual who has made a representation and it is a matter of how much weight the Panel wishes to place on that particular representation.

2.29 Legal implications

The Licensing Panel is required to hold a hearing to consider any relevant representations made in relation to the premises licence application unless all parties agree that a hearing is unnecessary. The hearing must be held in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.

2.30 The Licensing Panel is required to give appropriate weight to the representations (including supporting information) presented by all the parties, the Guidance issued pursuant to section 182 of the Licensing Act 2003, the Council's statement of licensing policy and the steps that are appropriate to promote the four licensing objectives.

2.31 Having considered those relevant matters, the Licensing Panel is required to take such of the following steps (if any) as it considers appropriate for the promotion of the licensing objectives –

The steps are—

- (a) to modify the conditions of the licence;
- (b) to reject the whole or part of the application;

The conditions of the licence are modified if any of them are altered or omitted or any new conditions added.

2.32 It should be noted with all options that –

- clear reasons should be given for the decision.
- any additional or modified conditions should be practical and enforceable
- the applicant and any person who made relevant representations would have the right of appeal to a magistrates' court on one of the grounds provided in Schedule 5 to the Licensing Act 2003

2.33 In addition to determining the application in accordance with the legislation, Members must have regard to the –

- common law rules of natural justice
- provisions of the Human Rights Act 1998
- considerations in section 17 of the Crime and Disorder Act 1998

2.35 By section 6 of the Human Rights Act 1998, the Panel is required to act in a way that is compatible with rights under the European Convention for the Protection of Human Rights. The following provisions of the European convention seem relevant: Article 6 (right to a fair trial) Article 14 (prohibition of discrimination) and Article 1 of the First Protocol (protection of property).

2.36 Section 17 of the Crime and Disorder Act 1998 states:

'Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.'

Financial Implications

2.37 There are no financial implications.

Appeals

2.38 If any party is aggrieved with the decision of the licensing panel on one of the grounds set out in Schedule 5 to the Licensing Act 2003, they can appeal to a magistrates' court within 21 days from notification of the decision.

Section 3 - Statutory Officer Clearance

Name: Jessie Mann



on behalf of the
Chief Financial Officer

Date: 06/01/17

Name: Paresh Mehta



on behalf of the
Monitoring Officer

Date: 10/01/17

Section 4 - Contact Details and Background Papers

Contact: Jeffrey Leib, Principal Licensing Officer extension 7667

Background Papers: Application form, Statutory Guidance.