

Agenda Item No: 1 - Summary of Report

Licence Reference Report To: 24/01167/LAPRE
**LICENSING SUB – COMMITTEE
(UNDER THE LICENSING ACT 2003)**

Date: 5th JUNE 2024

Report Title: YALDING SUPERMARKET, BENOVER ROAD, YALDING, MAIDSTONE, KENT, ME18 6EJ

Application for: A premises licence to be varied under the Licensing Act 2003

Report Author: Lorraine Neale

- Summary:**
1. The Applicant – Yalding Retail Ltd
 2. Type of authorisation applied for: To vary a premises licence under the Licensing Act 2003.
 3. Licensable Activities and hours:

		Current Hours		Hours: New Application	
B)	Films (Indoors)	Mon - Thurs Fri & Sat Sun	09:00-00:00 09:00-01:00 11:00-00:00	--	--
	Indoor Sporting Events	Mon - Thurs Fri & Sat Sun	09:00-00:00 09:00-01:00 11:00-00:00	--	--
E)	Live Music (Indoors)	Mon - Thurs Fri & Sat Sun	09:00-00:00 09:00-00:30 11:00-00:00	--	--
F)	Recorded Music (Indoors)	Mon - Thurs Fri & Sat Sun	09:00-00:00 09:00-00:30 11:00-00:00	--	--
G)	Performance of Dance (Indoors)	Mon - Thurs Fri & Sat Sun	09:00-00:00 09:00-00:30 11:00-00:00	--	--
H)	Anything of a similar description to that falling within (e), (f) or (g) (Indoors)	Mon - Thurs Fri & Sat Sun	09:00-00:00 09:00-00:30 11:00-00:00	--	--
I)	Late Night Refreshment (Indoors & Outdoors)	Sun - Thurs Fri & Sat	23:00 – 01:00 23:00 – 02:00	--	--
J)	Supply of alcohol (On & Off the premises)	Mon - Thurs Fri & Sat Sun	09:00-00:00 09:00-01:00 11:00-00:00	Every Day (on) Every Day (off)	11:00-23:00 07:30-23:00
L)	Opening Hours	Mon - Thurs Fri & Sat Sun	09:00-01:00 09:00-02:00 09:00-00:00	Every Day	07.30-23:00

Affected Wards: MARDEN & YALDING

Recommendations: The Committee is asked to determine the application and decide whether to grant the premises licence.

Policy Overview: The decision should be made with regard to the Secretary of State's Guidance and the Council's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from Policy or Guidance the departure must be directed solely at the attainment of the licensing objectives, and that such departure be supported by proper reasons.

Financial Implications: Costs associated with processing the application are taken from licensing fee income.

Other Material Implications: **HUMAN RIGHTS:** In considering this application it is appropriate to consider the rights of both the applicant and other parties, such as “**responsible authorities**” and/or “**other persons**” (objectors). The procedure for determining licences has a prescribed format to ensure fair representation of the relevant facts by all parties.

LEGAL: Under the Licensing Act 2003 the **Licensing Authority** has a duty to exercise licensing control of relevant premises.

Background Papers: Licensing Act 2003
DCMS Guidance Documents issued under section 182 of the Licensing Act 2003 as amended
Maidstone Borough Council Statement of Licensing Policy

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Report Title: YALDING SUPERMARKET, BENOVER ROAD, YALDING, MAIDSTONE, KENT, ME18 6EJ

Application: To vary a premises licence under the Licensing Act 2003

Purpose of the Report

The report advises Members of an application to vary a Premises Licence under the Licensing Act 2003 (Appendix 1), made by Yalding Retail Ltd, in respect of the premises Yalding Supermarket, Benover Road, Yalding, Maidstone, Kent, ME18 6EJ (Appendix 2) in respect of which 1 objection has been received from other parties (Appendix 3).

Issue to be Decided

Members are asked to determine whether to:

Grant the application as applied for, or

Grant the application and modify conditions of the licence, or

Reject all or part of the application

Background

1. The relevant sections are Part 3 S13 and 34 - 36 of The Licensing Act 2003 and section 4 of The Licensing Act 2003 in particular the Licensing Objectives:

The prevention of crime and disorder.

Public Safety

The prevention of public nuisance; and

The protection of children from harm

2. The application has been correctly advertised in the local press and notices displayed at the premises for the required period.

3. There were no representations received from responsible authorities.

4. There was 1 response from other parties (Appendix 3).

5. The table below illustrates the relevant representation which has been received

No	Responsible Authority/Other Party	Licensing Objective	Associated Documents	Appendix
1	Yalding Parish Council	Crime & Disorder Public Nuisance	E-mail	3

6. The premises has a current licence Appendix 4 and plans Appendix 5. The current licence holder is the applicant. The current licence hours are as per the licence attached at appendix 4 and set out at 3 of the summary above. The application also seeks to:-

- remove all licensable activity and non-standard timings from the licence apart from the the supply of alcohol.
- change the alcohol and opening hours of the licence

- provide amended plans reflecting the layout of the premises as a convenience store.
- remove the conditions at Annex 3 and replace them with those attached as part of the application.

7. The Operating Schedule submitted by the Applicant has addressed the licensing objectives of the variation application in the following manner:

a) General – all four licensing objectives:

All staff involved in the retail of alcohol will be trained in relation to the law regarding its sale. This training must be completed prior to them being authorised to sell alcohol by the DPS. A record of this training must be kept and maintained with a copy of the syllabus attached. The recipient of the training must sign to state they have received and understood the training and this should be dated.

This record should be kept on the premises at all times and made available for inspection following a reasonable request from an officer from a responsible authority.

b) The prevention of crime and disorder:

A CCTV system shall be installed and maintained at the premises. The system must be capable of recording and storing moving images and record at all times when the premises is open to the public.

The system must cover all public entry and exit points and any area where alcohol is exposed for sale. All images must be stored for a period of no less than 31 days and made available to an officer from a responsible authority following a reasonable request.

Ensure an incident book is maintained at the premises to record details of any incidents the nature of which may have compromised any of the licensing objectives under the Licensing Act 2003. CCTV recording dates & times shall be linked to incident book entries.

A comprehensive record of staff members must be kept and maintained. This record must include names, dates of birth, home addresses and current, valid documentation demonstrating the right to work of the individual with photographic ID. this record must be kept on the premises at all times and employees details must be retained for a period of no less than six months after their employment has ceased. The records must be made available to an officer from a responsible authority including an immigration officer upon a reasonable request.

Spirits will be displayed behind the sales point counter and will not be available by self-service.

The sale of alcohol for consumption ON the premises will not commence before 11.00hrs on any given day.

c) Public Safety:

Staff shall be trained in respect of the fire risk assessment for the premises.

Staff will be trained in respect of the Health and Safety risk assessment for the premises.

d) The prevention of public nuisance:

A notice shall be displayed in a prominent position requesting customers to use the external areas quietly, respecting the needs for local residents.

The external areas shall be managed in a way that ensures no nuisance is caused.

e) The Protection of children from harm:

A 'Challenge 25' scheme will be implemented and maintained, whereby any person that appears under 25 years of age has to prove they are over 18 by providing acceptable identification (as per the Home Office Guidance on acceptable ID – ID must contain a photograph, date of birth, holographic mark or ultra violet feature).

A notice shall be displayed in a prominent position at the premises to advise customers that Challenge 25 is in operation at the premises.

A refusals log / electronic till record shall be kept detailing all refused sales of age related products including alcohol. The log should include the date and time of the refused sale and the name of the member of staff who refused the sale. The log shall be available for inspection at the premises by Police and authorised officers of the Local Authority upon reasonable request.

9. Members are advised that applications cannot be refused in whole or in part, or conditions attached to the licence unless it is appropriate to do so to promote the licensing objectives.

10. Relevant sections of The Guidance issued under section 182 of The Licensing Act 2003;

Chapters 8 (8.42 onwards) & 9 Premises Licences & Determining Applications

Chapter 10 Conditions

Relevant policy statements contained in the Licensing Authority's Statement of Licensing Policy:

17.10 Crime and Disorder

17.22. Prevention of Public Nuisance

CONDITIONS TO PROMOTE THE PREVENTION OF CRIME AND DISORDER.

17.10 Under the Act the Licensing Authority has a duty to promote the licensing objectives, and, a further duty under the Crime and Disorder Act 1998 to do all it reasonably can to prevent crime and disorder in the borough.

17.11 Wholesale of alcohol. Since 1 April 2017, businesses which sell alcohol (for example, retailers of alcohol and trade buyers) need to ensure that the UK wholesalers that they buy alcohol from have been approved by HMRC under the Alcohol Wholesaler Registration Scheme (AWRS). They will need to check their wholesalers Unique Registration Number (URN) against the HMRC online database. This is an ongoing obligation and if a business is found to have bought alcohol from an unapproved wholesaler, they may be liable to a penalty or could even face a criminal prosecution and their alcohol stock may be seized. Any trader who buys alcohol from a wholesaler for onward sale to the general public (known as a 'trade buyer') does not need to register unless they sell alcohol to other businesses.

17.12 Examples of trade buyers would be pubs, clubs, restaurants, cafes, retailers and hotels. However, they will need to check that the wholesaler they purchase alcohol from is registered with HMRC.

17.13 The applicant will be expected to detail in their operating schedule how they will prevent crime and disorder on and close to the premises. Such detail should reflect the licensable activities on offer, location and character of the area, the nature of the premises use and the range of customers likely to use the premises.

These may include, but are not limited to, the following:

- Prevention of disorderly conduct and anti-social behaviour
- Prevention of underage drinking
- Prevention of sales of alcohol to intoxicated customers
- Prevention of drunkenness both on and in the vicinity of the premises
- Prevention of drug use and drug dealing
- Restriction to responsible drinks promotions
- Use of safety glass
- Inclusion of a wind-down time following alcohol sales period
- Adequate seating to discourage “vertical drinking”
- The offer of food and snacks or other entertainment or occupation to discourage persistent drinking

17.14 In busier premises the Licensing Authority would usually expect to see a short (e.g.30 mins) ‘wind down’ or ‘drinking up’ period allowed for after the cessation time of entertainment and alcohol sales as this is effective in assisting in a reduction in noise and exuberance of customers before leaving the premises.

17.15 Applicants will be expected to seek advice from the Police and the Licensing Authority will give appropriate weight to requests by the Police for premises to be protected by SIA registered door staff subject to the provision of relevant evidence. Where the Licensing Authority determines after consultation with the police that a premises is one that warrants additional security and monitoring it would expect applicants to include the provision of SIA approved door staff at the premises at appropriate times. Relevant premises are usually those used mainly for drinking alcohol, have later opening hours and are situated within the Town Centre night time economy area.

17.16 Where appropriate, applicants for licences in the Town Centre areas providing mainly alcohol, music and dancing would be expected to consider inclusion of a provision of safety glasses to prevent a risk of injury on the rare occasion that a glass may be used as a weapon.

17.17 The use of CCTV should be considered where appropriate or on the advice and recommendations of the Police and to a quality and standard approved by the Police for evidential purposes. Licensees will be expected to fully comply with the requirements of the Information Commissioners Office and the Data Protection Act 1998 in respect of any surveillance equipment installed at a premises.

17.18 In any application resulting in hearing the sub-committee will consider each application on its individual merits and determine the imposition of conditions that are appropriate to promotion of the licensing objectives.

CONDITIONS TO PROMOTE THE PREVENTION OF PUBLIC NUISANCE.

17.22 The applicant will be expected to detail any appropriate and proportionate steps to prevent nuisance and disturbance arising from the licensable activities at the premises and from the customers using the premises.

17.23 The applicant will be expected to demonstrate that they have considered the following and included steps to prevent public nuisance:

- (i) Proximity of local residents to the premises
- (ii) Licensable activities proposed and customer base
- (iii) Hours and nature of operation

- (iv) Risk and Prevention of noise leakage from the premises from equipment, customers and machinery
- (v) Prevention of noise from customers leaving the premises and customer pick up points outside premises and from the Car Park.
- (vi) Availability of public transport to and from the premises
- (vii) Delivery and collection times and locations.
- (viii) Impact of external security or general lighting on residents.
- (ix) History of management of and complaints about the premises.
- (x) Applicant's previous success in preventing Public Nuisance.
- (xi) Outcomes of discussions with the relevant Responsible Authorities.
- (xii) Impact of location, noise and contamination from outside smoking areas on neighbours and other customers
- (xiii) Collection of litter arising from the premises

17.24 Steps to prevent public nuisance may include a range of options including noise limiting devices, sound insulation, wind down periods, acoustic lobbies, management of smoking areas etc.

17.25 Steps will differ depending on the individual premises and activities and it is for the applicant to ensure that reasonable, effective and appropriate steps are included within the operating schedule.

11 Options

Legal options open to members –

Grant the variation application as applied for., or

Grant the variation and modify conditions of the licence, or

Reject all or part of the application

Members of the Licensing Act 2003 – Licensing Sub – Committee are reminded of their duty under section 17 of the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the Licensing Authority's responsibility to co – operate in the reduction of crime and disorder in the Borough

Section 17 of the Crime and Disorder Act 1988 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 function on, and the need to do all that it reasonably can prevent, crime and disorder in its area".

12. Implications Assessment

The decision should be made with regard to the Secretary of State's Guidance and the Council's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from either the Guidance or the policy clear and cogent reasons must be given. Members should be aware that if such a departure is made the risk of appeal/challenge is increased.

13. Human Rights

While all Convention Rights must be considered, those which are of particular relevance to the application are:

- a. Article 8 – Right to respect for private and family life
- b. Article 1 of the First Protocol – Protection of Property
- c. Article 6(1) – Right to Fair Hearing
- d. Article 10 – Freedom of Expression

The full text of each Article is given in the attached Appendices

14. Conclusion

Members must ensure that the application is considered on its merits, as well as against the relevant guidance, policy and statutory framework.

15. List of Appendices

Appendix 1	Application Form
Appendix 2	Plan of Premises
Appendix 3	Other parties' representation.
Appendix 4	Current Licence
Appendix 5	Current Plans
Appendix 6	Plan of area
Appendix 7	Human Rights Articles
Appendix 8	Order of Proceedings

16. Appeals

The applicant or any other person(objector) may appeal the Licensing Act 2003 Sub Committee's decision within 21 days beginning with the day on which the Appellant is notified. All/any appeals must be lodged with the Magistrates' Court. Parties should be aware that they MAY incur an Adverse Costs Order should they bring an appeal.

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