



Subject: APPLICATION FOR A PREMISES LICENCE UNDER THE LICENSING ACT 2003

Premises: Saver Smart, 94 Kirkway, Middleton, M24 1EN

Report to: Licensing Sub-Committee

Date: 2 October 2020

Cabinet Member: Councillor Sara Rowbotham
Cabinet Member for Health and Wellbeing

Report of: Mark Widdup
Director of Neighbourhoods

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1 Purpose of Report

- 1.1 The report provides information to the Licensing Sub-Committee to assist in determining the application for a Premises Licence, made under Section 17 of the Licensing Act 2003, for Saver Smart, 94 Kirkway, Middleton to which representations have been received from Responsible Authorities/Other Interested Persons.

2 Recommendations

- 2.1 Members are to determine the application and either:
- (a) Grant the application as submitted; or
 - (b) Grant the application, with appropriate conditions; or
 - (c) Reject the application.

3 Reason for Recommendation

- 3.1 The Licensing Sub-Committee has delegated authority to determine applications for Premises Licences when representations have been made by Responsible Authorities or Interested Persons.

4 The Application

- 4.1 The application was made on 30 July 2020.

4.2 Premises Licence Holder

Name: Mr Sarfraz Ahmed

4.3 The Designated Premises Supervisor

Name: Mr Sarfraz Ahmed

5 The Scope of Application for Licence

- 5.1 The applicant has described the premises as a small community based mini market and grocery store with off licence situated in Middleton and is intending to undertake the following licensable activity:

(J) Supply of Alcohol OFF the premises

Monday to Sunday 06.00 hours to 23.00 hours

(L) Opening Hours

Monday to Sunday 06.00 hours to 23.00 hours

5.2 Steps indicated to promote the Licensing Objectives

The steps the premises are intending to take to promote the licensing objectives are described in the application form as:

General

1. The premises shall install and maintain a digital CCTV system.
2. The CCTV system shall sufficient hard drive storage capacity to store a minimum of 31 days.
3. The CCTV system shall be capable of obtaining clear facial recognition images and a clear head and shoulders image of every person entering or leaving the premises at each exit and entrance point.
4. A CCTV log will be completed on a weekly basis to record all elements of the CCTV System is maintained in good working order and recordings date and time stamped.
5. Only nominated staff shall be trained in the operation of the CCTV system to ensure rapid data retrieval & downloads of footage can be provided to the Police & the Local Authority Officer upon reasonable request in accordance with the Data Protection Act.
6. CCTV shall be continually recording during licensable hours.
7. In the event of a failure of the CCTV system for any reason, a record of the failure will be recorded in the premises log and immediate steps will be made to rectify the problem.

The Prevention of Crime and Disorder

1. An incident log must be kept at the premises. Log records will be retained for a period of 12 months from the date it occurred. It will be made immediately available on request to an 'authorised person' (as defined by section 13 of the Licensing Act 2003), an authorised trading standards officer or the police, and must record the following;
 - a) All crimes reported to the premises (where relevant to the licensing objectives)
 - b) Any incidents of disorder
2. When the designated premises supervisor is not on duty, a contact telephone number will be available at all times.
3. All spirits will be stored and sold behind the counter.
4. Roller shutters have been installed at the front of the premises, and security bars are installed at the rear.

Public Safety

No risk has been assessed under the Licensing Act 2003.

The Prevention of Public Nuisance

1. Prominent, clear and legible signage shall be displayed at all exits to the premises requesting the public to respect the needs of local residents and to leave the premises and the area quickly and quietly.

The Protection of Children from Harm

1. A written register of refusals will be kept including a description of the people who have been unable to provide required identification to prove their age. Such records shall be kept for a period of 12 months and will be collected by the designated premises supervisor and produced to the police or an 'authorised person' (as defined by section 13 of the licensing act 2003) or an authorised trading standards officer the local authority/council on demand.
2. All staff engaged in the sale of alcohol to be trained in Challenge 25. Training records shall be kept on the premises and produced to the police or an 'authorised person' (as defined by section 13 of the licensing act 2003) or an authorised trading standards officer of the local authority/council on demand.
3. The premises shall operate a Challenge 25 policy. Such policy shall be written down and kept at the premises. The policy shall be produced on demand of the police or an 'authorised person' (as defined by section 13 of the licensing act 2003) or an authorised trading standards officer the local authority/council.
4. Prominent, clear and legible Challenge 25 signage shall also be displayed at all entrances to the premises as well as at, at least one location behind any counter advertising the scheme operated.

The Application for a Premises Licence is attached as Appendix 1 of this report.
The premises location plan is attached as Appendix 2 of this report.

After the submission of the application and in light of the representations received (as outlined below in the report), on 17 August 2020 the applicant had offered to reduce their hours for licensable activities and asked as to whether we could bring this offer to the attention of the objectors. The proposed reduced hours were as follows:

(J) Supply of Alcohol OFF the premises
Monday to Sunday 09.00 hours to 21.00 hours

(L) Opening Hours
Monday to Sunday 06.00 hours to 21.00 hours

On 19 August 2020, this was communicated to all the persons who had made representations up to that time. However, due to the objectors not accepting the proposal, the offer of reduced hours has since been withdrawn by the applicant.

The offer to reduce hours and its subsequent withdrawal is attached as Appendix 3 of the report.

6 Relevant Representations

6.1 Legislation

Section 18 (3) Where relevant representations are made, the authority must:

- (a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and
- (b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives.

6.2 Responsible Authority Representations

A representation was received from the Weights and Measures Authority on 18 August 2020.

In summary, the representation is in relation to the licensing objective the protection of children from harm. The Authority stated that there was insufficient information from the applicant/Premises Licence Holder within the application for licence to demonstrate how the protection of children from harm licensing objective will be promoted. A number of conditions were suggested in part 3B of the representation form.

The Weights and Measures Authority and the applicant have agreed the conditions. The representation and confirmation of agreement of conditions is attached as Appendix 4 of the report.

6.3 Interested Persons Representations

- a) A representation was received on 6 August 2020 from Mr Kieran Beehan.

In summary, his concerns relate to the licensing objectives, the prevention of crime and disorder and the prevention of public nuisance. He is concerned around the issues of anti-social behaviour that the premises may attract and noise nuisance which will have an impact on residents who are living in close proximity to the premises. He has also queried the 'need' to have another premises, within the area, retailing alcohol. He has suggested that if the licensing sub-committee are minded to grant the licence, then there should be a reduction in hours in terms of the operational hours of the business / the retail sale of alcohol and the requirement to have robust conditions in relation to the use of CCTV.

Following the applicant's initial offer to reduce hours, subsequent correspondence from Mr Beehan on 24 August 2020 indicates that he would be willing to withdraw his objection if the premises was to adjust its hours from 10am to 9pm (Mon to Sun) for the retail sale of alcohol.

The representation and correspondence is attached as Appendix 5 of the report.

- b) A representation was received on 11 August 2020 from Mr David Spurway.

In summary, his concerns relate to the licensing objectives, the prevention of crime and disorder, public safety and the prevention of public nuisance. His concerns are that the area is experiencing an increase in criminal activities and there are already a sufficient number of businesses retailing alcohol and therefore there is no 'need' of another alcohol retail outlet.

The representation is attached as Appendix 6 of the report.

- c) A representation was received on 11 August 2020 from Mr Leslie Fallows.

In summary, his concerns relate to the licensing objectives, the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. He believes that the grant of the licence will lead to an increase in youths within the area engaging in anti-social behaviour and that the area suffers from a history of youths congregating. He also has concerns of the impact of noise nuisance to residents living above the premises and his garden being used to dump food and alcohol.

The representation is attached as Appendix 7 of the report.

d) A representation was received on 13 August 2020 from Mr Sean O'Henly.

In summary, his concerns relate to the licensing objectives, the prevention of crime and disorder, public safety and the prevention of public nuisance. He states that he is already experiencing levels of anti-social behaviour and believe that there would be an increase in nuisance and anti-social behaviour should the licence be granted. He is concerned that youths congregate in this area which will only increase and bring about further anti-social behaviour. He is concerned about the noise levels that may be generated from cars parking late at night to frequent the premises which will then have an impact on the residents.

The representation is attached as Appendix 8 of the report.

e) A Representation was received on 14 August 2020 from Mr Damian Edwards (who is an existing Premises Licence Holder of an off-licence in the vicinity of the premises).

In summary, his concerns relate to the licensing objectives, the prevention of crime and disorder, public safety and the prevention of public nuisance. His concerns are that previous off-licences in the area caused major issues by serving alcohol to under-aged persons and the location of the premises is not safe for parking. He is also concerned of the noise nuisance that the premises may generate for residents.

The representation is attached as Appendix 9 of the report.

f) A representation was received on 14 August 2020 from Mr Robert Rowlinson.

In summary, his concerns relate to the licensing objectives, the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. He states that there are already existing establishments within the area who retail alcohol and having an additional premises retailing alcohol will only increase the crime rate within Alkington. He also believes due to a lack of police resources and funding, there could be a potential of under-aged sales taking place.

The representation is attached as Appendix 10 of the report.

g) A representation was received on 14 August 2020 from Mr Andrew Burton.

In summary, his concerns relate to the licensing objectives, the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. He states that the area is a quiet area with a more elderly population who may feel intimidated by the increase in traffic and potential disorderly behaviour that may be generated. He has also concerns that this will lead to an increase in youths in large groups congregating in the car park in front of the premises who may cause a nuisance with there being an increased chance of alcohol being sold to under-aged persons. He believes that there are already a sufficient number of businesses retailing alcohol in such a small area and allowing a premises to retail alcohol for the hours specified will generate noise nuisance.

The representation is attached as Appendix 11 of the report.

h) A representation was received on 20 August 2020 from Mr Michael White.

In summary, his concerns relate to the licensing objective, the prevention of crime and disorder. His concerns are that there has been historical problems associated with youths congregating in the area and has fears that this may re-occur if a licence is granted leading to public disorder. However, he suggests that the applicant does seem like a very responsible person.

The representation is attached as Appendix 12 of the report.

i) A representation was received on 25 August 2020 from Mr Chris Clark.

In summary, his concerns relate to the licensing objective, the prevention of crime and disorder, public safety and the prevention of public nuisance. His concerns are that another premises retailing alcohol will only lead to further crime in the area. He states that there are already youths congregating outside the premises and nuisance problems may be exacerbated.

The representation is attached as Appendix 13 of the report.

j) A representation was received on 25 August 2020 from Mrs Mary Upton.

In summary, her concerns relate to the licensing objectives, the prevention of crime and disorder and the prevention of public nuisance. Her concerns are that the grant of the licence will lead to an increase in the number of anti-social behaviour incidents in the area, as previously experienced, leading to the harassment and intimidation of residents living within the vicinity. She feels that there will an increase of littering within the area and proxy-sales of alcohol may take place.

The representation is attached as Appendix 14 of the report.

7 The Council's Statement of Licensing Policy & National Guidance regarding licensing objectives

7.1 It is considered that the following policies may have a bearing on the application:

Extract(s) from Council's Licensing Policy:

(2.3) ...the Licensing Authority will exercise its licensing functions in order to promote the four Licensing Objectives which are:

- d) The prevention of crime and disorder;
- e) The prevention of public nuisance;
- f) Public safety; and
- g) The protection of children from harm.

(2.4) Each licensing objective is considered to be of equal importance within this Policy. They will be considered in relation to matters centred on the premises or within the control of the licensee and the effect if any, which the carrying on of that business has on the vicinity.

(12.2) Location and Impact of Activity - This part of the policy is concerned with whether a proposal is appropriate in a location with particular regard to the impact on any residential areas. In most of the Borough, which is predominantly residential, the policy will in appropriate cases limit the *normal* hours of opening for new licensed activities to a maximum time which is no later than midnight.

Later opening hours are considered to be acceptable, in principle, for premises in commercial areas with high levels of public transport accessibility. However, in all cases, the granting of a licence will depend on impact of an activity, particularly on local residents. It is necessary to consider, amongst other things, the level of impact that could arise from noise and vibration, litter, parking, people coming and going, transport, crowds and queuing; and whether any impact is particularly unacceptable late at night.

Policy

If relevant representations are received, the Authority will *normally* expect a closing time of no later than midnight for licensed premises in residential areas, *but* a later closing time may be permitted for premises located:

- in predominantly commercial areas,
- where there is a high level of accessibility to public transport services; and

- where there is an appropriate amount of car parking, readily accessible to the premises, and in places where vehicular movement will not cause demonstrable adverse impact to local residents; and
- the Operating Schedule submitted with the application indicates that the applicant is taking appropriate steps to comply with the licensing objective of preventing public nuisance.

Exceptions may be made to permit a later closing time/earlier opening time where it can be demonstrated that:

- the licensed activities would not be likely to cause adverse impact especially on local residents, and that, if there is a potential to cause adverse impact, appropriate measures will be put in place to prevent it; and
- there will not be any increase in the cumulative adverse impact from these or similar activities, on an adjacent residential area.

Reason

This part of the policy dealing with opening hours is based on a broad distinction between the approach to be taken in certain predominantly commercial areas, like parts of the town centres, and the rest of the Borough.

Any activity involving public entertainment or eating or drinking on the premises has the potential to impact adversely on the surrounding area due to noise, smells, or congestion on the footway. It may also be caused by the customers being noisy when leaving, leaving litter or taking up on-street car parking space in close proximity to residential premises. The impact of noise generated by these activities, especially customers departing either on foot or in cars, is particularly intrusive at night when ambient noise levels are much lower.

(12.4) Consideration of the Impact of Licensed Activities - When considering whether any licensable activity should be permitted, on receipt of any relevant representations, the Authority will assess the likelihood of it causing unacceptable adverse impact, particularly on local residents, by considering the following factors amongst other relevant matters:

- the type of use, the number of customers likely to attend the premises and the type of customers at the time of the application;
- the proposed hours of operation;
- the level of public transport accessibility for customers either arriving or leaving premises and the likely means of public or private transport that will be used by the customers;
- the means of access to the premises, which should have customer entrances on the principal pedestrian routes;
- the cumulative impact of licensed premises in an area;
- the scope for mitigating any impact;
- how often the activity occurs.

and, in considering any application for a premises which is already licensed, the Authority will take into account any evidence:

- of past demonstrable adverse impact from the activity, especially on local residents;
- or
- that, if adverse impact has been caused, appropriate measures have been agreed and put into effect by the applicant to mitigate the adverse impact. If, however, such measures have not been put into effect or there has been insufficient time to assess them, this could impact on the determination of the application;

or

- of past history of the premises, where there have been no relevant complaints or problems.

Reason

The prime purpose of this part of the policy is to achieve the licensing objective of preventing public nuisance. In furtherance of this aim the policy lists particular matters that the Authority will take into account in considering whether a licensed activity is likely to cause an adverse impact, particularly to local residents:

- The precise nature of the activity, especially for entertainment, will be a factor in considering the impact, principally in terms of the age and orderliness of the customers.
- Levels of noise from licensed premises, which may be acceptable at certain times of day, may not be acceptable later in the evening or at night when ambient noise levels are much lower.
- The Authority's preference is to see licensed activities located in places where customers are not reliant on private car use, and can walk or use public transport. The Borough varies considerably. In town centres, a high use of public transport could be expected by the customers of licensed premises but, even there, car use is likely to increase when activities go on very late. Consequently, there could be unacceptable parking and traffic in nearby residential areas.
- The main impact of customers arriving, queuing and leaving should be confined to principal pedestrian routes as far as possible. It would not be appropriate, for instance, to have licensed activities which cause large numbers of people to exit into a residential area as opposed to a situation where pedestrian movement takes place directly to and from nearby public transport services.
- Car parking by customers of licensed premises can be a serious problem. This affects local residents in terms of noise and their ability to find a parking space, particularly after the hours when any controlled parking zones are in operation. It can also affect the movement of essential traffic on primary routes and delay bus and emergency services. When considering the possible impact on residents, the Authority will look at the area within which the impact could be experienced, in particular the likely distance at which most customers arriving by car would seek to park. The potential parking area for major entertainments can be substantial.

With any adverse impact it may be possible to take steps to mitigate or prevent the impact and if such measures are reliable an activity may be licensed. In accordance with Government advice, the decisions taken by the Authority will obviously be focused on matters within the control of individual licensees, and others granted relevant permissions, and the steps they can take to achieve the licensing objectives. Accordingly, these matters will centre on the premises and places being used for licensable activities and the likely impact of those activities on members of public living, working or engaged in normal activity in the area concerned.

In taking its decisions the Authority accepts the difficulty a licence holder has in preventing anti-social behaviour by individuals, once they are beyond the direct control of that licence holder. However, it will also take into account that the licensing objective of preventing public nuisance will not be achieved if patrons from licensed premises regularly engage in anti-social activities to the detriment of nearby residents or businesses. Furthermore it will also take into account its responsibility under the Crime and Disorder Act 1998 to do all it can to prevent crime and disorder in the Borough.

The aim of the policy is, therefore, to achieve a balanced approach to these difficult issues.

Extract(s) from the National Guidance regarding licensing objectives

(1.17) Each application on its own merits - Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case".

(2.1) Crime and Disorder - Licensing authorities should look to the police as the main source of advice on crime and disorder.

(10.10) Proportionality - The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises.

(14.9) The need for licensed premises - There can be confusion about the difference between the "need" for premises and the "cumulative impact" of premises on the licensing objectives, for example, on crime and disorder. "Need" concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy.

Extract from the National Guidance regarding Planning and Building Control

(14.65) There are circumstances when, as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law.

Rochdale Borough Council's Planning Service have informed the Licensing Authority that planning permission for the use of the premises are subject to the following planning hours:

Monday to Friday: 06.30 hours to 18.30 hours;
Saturday: 07.00 hours to 18.00 hours; and
Sunday and Bank Holidays: 07.30 hours to 15.00 hours.

8 Observations

8.1 The Committee is obliged to determine this application with a view to promoting the licensing objectives which are:

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance;
- the protection of children from harm.

8.2 In making its decision, the Committee is also obliged to have regard to National Guidance and the Council's own Licensing Policy.

8.3 Of course, the Committee must also have regard to the representations made and the evidence it hears.

8.4 The Committee must take such of the following steps as it considers appropriate for the promotion of the licensing objectives:

- (i) Grant the application as submitted.
- (ii) Grant the application, with appropriate conditions.
- (iii) Reject the application.

8.5 The Committee is asked to note that it may not modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so. It must actually be appropriate in order to promote the licensing objectives.

8.6 Nonetheless, this is a matter for the Committee to determine in light of the above matters, and any others it considers material.

For further information about this report or access to any background papers, please contact Jahangir Alom, Licensing Operational Manager, in Neighbourhoods Service (Public Protection), Number One Riverside, Smith Street, Rochdale. OL16 1XU Telephone: 01706 924114.

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