

East Herts Council Report

Licensing Sub-Committee

Date of Meeting: 12 October 2023

Report by: Jonathan Geall, Head of Housing and Health

Report title: Application to vary a premises licence for Budgens (formerly McColls), Baldock Road, Buntingford, Hertfordshire (23/1202/PLV)

Ward(s) affected: Buntingford

Summary

- An application to vary the premises licence has been received from Samy Limited. Representations against the application have been made by Hertfordshire Constabulary, Buntingford Town Council, a local councillor and nine interested parties. Where representations are received against an application, and not withdrawn, there must be a Licensing Sub-Committee meeting to determine that application. This report is to inform that decision.

RECOMMENDATIONS FOR LICENSING SUB-COMMITTEE

(A) The application to vary a premises licence be decided.

1.0 Proposal(s)

1.1 Members of the Licensing Sub-Committee should determine the application to vary the premises licence for Samy limited through consideration of the information contained in this

report and appendices combined with submissions made at the Licensing Sub-Committee hearing.

2.0 Background

2.1 Under the Licensing Act 2003 and the council's Statement of Licensing Policy (herein 'the Policy') an application for a new or variation to a licence or certificate is granted by officers under delegated authority if no valid representations are received.

2.2 Where valid representations are received the council's discretion is engaged. A Licensing Sub-Committee has the delegated authority to determine applications for new and varied licences and certificates. This decision must be made whilst having regard to the Licensing Objectives, the council's own Statement of Licensing Policy and to statutory guidance issued by the Secretary of State under section 182 of the Licensing Act.

2.3 The Licensing Objectives are:

- Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance; and
- Protection of Children from Harm.

3.0 Reason(s)

3.1 The application by Samy Limited was submitted on 25th August 2023.

3.2 The application requested to vary the licensable activities, hours and conditions attached to the licence. The applicant describes the variation as seeking to do the following:

1. To extend the hours for the sale of alcohol to 24hrs daily.

2. To allow the provision of late night refreshment between the hours of 2300 and 0500 daily.
3. To remove the conditions listed under Annex 2 and 3.
4. To include in Annex 2 the conditions in Section 16 of the application.
5. To remove the restrictions to the sale of alcohol and opening hours on Good Friday and Christmas Day.

3.3 The licensable activities and hours requested in the variation application are shown in the table below.

Licensable Activity	Day	Hours applied for
Provision of late night refreshment (both indoors and outdoors)	Monday - Sunday	23:00 – 05:00
Supply of alcohol (for consumption OFF the premises)	Monday - Sunday	00:00 – 24:00
Premises open to the public	Monday - Sunday	00:00 – 24:00

3.4 The premises licence the applicant is seeking to vary, showing the currently permitted licensable activities and hours, is attached at **Appendix 'A'**. The plan of the premises attached to the premises licence is **Appendix 'B'**. A redacted copy of the application form to vary a premises licence is attached as **Appendix 'C'**.

3.5 On the application form it asks applicants to 'Identify those conditions currently imposed on the licence which you believe could be removed as a consequence of the proposed variation

you are seeking'. The applicant states that they wish to remove the conditions listed in Annex 2 and Annex 3 of the existing licence. Annex 2 contains conditions consistent with the operating schedule, so those offered in a previous application, and annex 3 contains conditions attached after a hearing by the licensing authority. Both annexes can be seen on the current premises licence at Appendix 'A'

- 3.6 Section 16 of the application form (Licensing Objectives) asks the applicant to describe the steps they intend to take to promote the four Licensing Objectives. In this section the applicant has detailed 15 points which can potentially be converted into conditions and attached to any granted premises licence.
- 3.7 During the 28-day statutory public consultation period twelve representations were received against the application from interested parties: one from Hertfordshire Constabulary, one from Buntingford Town Council, one from a Local Councillor and nine from local residents. All of the representations are attached at **Appendix 'D'**.
- 3.8 Between them, the representations suggest that the following Licensing Objectives would be undermined if the application is granted as requested:
- Prevention of Public Nuisance;
 - Prevention of Crime and Disorder; and
 - Public safety.
- 3.9 Representation 1 – Police (Responsible Authority)
Hertfordshire Constabulary have sent in a representation based on the potential for the following Licensing Objectives to be undermined if the application is granted as applied for:
- Prevention of Crime and Disorder;

- Prevention of Public Nuisance; and
- Public Safety.

3.10 The Police's state is that licensable activity should cease at 23:00 and that having alcohol available 24/7 increases the probability of anti-social behaviour. Reference is made to crime data which indicates that across East Herts crime figures escalate after 22:00 on Friday and Saturday nights. They raise that there is the potential for people to congregate at the premises due to the availability of alcohol, food and cigarettes.

3.11 The Police have detailed several conditions they would like to see attached to the premises licence. The first 14 appear to be applicable if the premises is granted additional hours to midnight with the remaining conditions being required necessary if hours are granted beyond midnight.

3.12 Representation 2 – Buntingford Town Council

This representation references that other premises have restricted hours on the grounds of crime and disorder, but this is not relevant as each application must be considered on its own merits. There is mention of people already congregating outside the premises in the evening and members may wish to ask for more details around this. The representation highlights that the premises is in close proximity to residents including living above the premises.

3.13 Representation 3 – Local resident

This representation again highlights the residential nature of the area but then references there being 'no need' for the premises. Need or not for a particular premises is specifically excluded from being a consideration in relation to licensing matters.

3.14 The interested party goes onto state that if the licence is granted the premises will '*will only attract antisocial, drunk and*

aggressive behaviour, to the area and an increase of litter, noise and late night traffic'. Members may wish to ask the interested party why they believe this will be the case and if they can provide any evidence to support this assertion.

- 3.15 Reference is made to other licensed premises, but this application must be considered on its own merits. The interested party then asks for the hours to be restricted to those already granted and for the variation application to be refused.
- 3.16 Representation 4 – Local resident
The interested party believes that the licence, if granted would cause more noise and rowdiness but attributes this to other licensed premises and not the applicant's premises. They go on to state that it could 'possibly cause crime and vandalism' so members may wish to ask why the interested party believes this.
- 3.17 Representation 5 – Local resident
The interested party states that the 24 hour alcohol licence would cause anti-social behaviour and unnecessary noise 24/7. Reference is made to elderly ladies who are nervous about the proposal but without these individuals making representations or being officially represented by the interested party this comment should carry no weight. 'Need' for the premises is questioned but as stated above this isn't a relevant consideration in this matter.
- 3.18 Representation 6 – Local resident
Reference is made to daytime noise already existing, but this is not relevant to the variation application. Again, the potential for noise and anti-social behaviour is raised and linked to issues caused by premises allowed to sell alcohol for consumption on the premises. Members may wish to ask the interested party to elaborate on how they believe this

particular premises and application would lead to the undermining of the licensing objectives.

3.19 Representation 7 – Local Resident

This representation references children with special needs living in the vicinity of the premises but does not appear to be directly from one of the families of the children. They state that it is inevitable that if granted the premises would cause disruption including *'lewd behaviour, copious noise, increased crime and damage to property'*. Again, members may wish to ask the interested party to further explain why they believe that granting the variation would have these impacts.

3.20 Representation 8 – Local Councillor

The question of 'need' is initially raised but as detailed above this is not a relevant consideration in this matter. The likelihood of increased noise and anti-social behaviour in what is described as a mostly residential street is raised in connection with the extended opening hours.

3.21 The potential impact on public health of the availability of alcohol 24 hours per day is raised but the Licensing Act 2003 does not have a health objective, so this is also not relevant to the current application. Public health are a Responsible Authority under the act and have not raised any representation.

3.22 In a follow up email the Councillor clarifies the points made in the first email and states that any extended hours would impact on this residential area.

3.23 Representation 9 – Local Resident

This resident lives close to the premises and is afraid that the extended hours would create anti-social behaviour outside their home which would have them living in fear.

- 3.24 Representation 10 – Local Resident
The interested party raises the issue of public nuisance which disturbs their sleep. They state that currently the town is quiet at night but that this application, if granted, would cause vehicle and people noise. The final point is that the premises are situated in a residential area which is unsuitable for a 24 hour shop.
- 3.25 Representation 11 – Local Resident
The representation indicates that neighbours are already suffering from noise and litter from the premises. The ‘need’ for the premises is raised which has been dealt with earlier in the report and is not a relevant consideration.
- 3.26 Representation 12 – Local Resident
The interested party raises that the premises are in a residential area and that the disturbance from the later hours would be a significant nuisance. The representation mentions that house prices will be affected and that the interested party would not have chosen to buy a house next door to a 24 hour shop. These final points are not relevant to the Licensing Objectives so cannot be considered when reaching a decision.
- 3.27 A plan of the area in which the premises are located is attached at **Appendix ‘E’**. This can be used to illustrate the location of the premises in relation to residents and other businesses.

Policy and Guidance

- 3.12 Section 5 of the East Herts [‘Statement of Licensing Policy’](#) (herein ‘the Policy’) relates to Pre-application advice and engagement. Paragraphs 5.7 and 5.8 state:

5.7 Engagement is an important element of the licensing process. Applicants are expected to have considered the location and

community it is proposing to operate in. An understanding of the concerns to be addressed can be obtained by early engagement with a variety of bodies and individuals including:

- Responsible authorities*
- Ward Councilor's*
- Town councils*
- Parish councils*
- Residents Associations*
- Businesses and residents in the vicinity of the proposed premises.*

5.8 Experience shows that early engagement allows concerns to be addressed in the most timely and cost effective way for all parties. Where concerns cannot be addressed before an application is made resulting in representations the expectation is that the dialogue between the parties continues to try and find common ground.

3.13 Section 6 of the Policy details definitions of premises and location and operation of premises, differentiating between Town Centre locations and other areas. Under this section of the Policy the alcohol sales by Budgen's (formerly McColls) would be classed as an 'Off-licence' and the late night refreshment element of the operation, depending on how it operates, may fall under 'Take-away (food)'.

3.14 The proposed premises are not within a Town Centre as defined in section 7.0 of the Policy so are designated as 'Other Area'.

3.15 The table at 6.9 of the Policy details the council's approach to hours for licensed premises when it has received relevant representations to an application.

- In relation to 'Off Licences' located in an 'Other Area', it

states:

*Will generally be granted alcohol sales no later than **23:00**.*

- In relation to 'Take-aways (food)' located in an 'Other Area', it states:

*Will generally be granted licensable activities no later than **midnight**.*

3.16 Paragraph 6.10 of the Policy states:

- *The hours detailed above will not be automatically applied where representations are received, and a Licensing Sub-Committee decides the application. Each application will be considered on its own merits and the most appropriate way to mitigate concerns will be taken.*

3.17 Section 8 of the Policy deals with the Licensing Objectives:

8.1 The Licensing Authority must carry out its functions with a view to promoting the four Licensing Objectives, each of which has equal importance:

- *the Prevention of Crime and Disorder,*
- *Public Safety,*
- *the Prevention of Public Nuisance, and*
- *the Protection of Children from Harm.*

8.2 It is recognised that the licensing function is only one means of securing the delivery of the above Objectives and should not therefore be seen as a means for solving all local problems. The Licensing Authority will therefore continue to work in partnership with all stakeholders and partners towards the promotion of the Licensing Objectives.

8.3 The Licensing Authority expects applicants to address the licensing objectives within their operating schedules, having regard to the nature of the premises, the licensable activities to be provided, operational procedures, and the nature of the location and the needs of local communities. The operating schedule should contain sufficient information to enable the Licensing Authority, responsible authorities and other persons who may be affected by the operation of the licensed premises to assess whether the steps which will be taken to promote the licensing objectives are sufficient to mitigate any potential adverse impact.

3.18 Paragraphs 8.6 to 8.13 of the Policy contain information on how the council considers applications in respect of the Licensing Objective 'Prevention of Crime and disorder' and paragraphs 8.20 to 8.30 deal with the Licensing Objective of 'Prevention of public nuisance'. These are the Licensing Objectives identified within the representations against this application.

3.19 Section 15, paragraphs 15.1 and 15.2 deal with the 'Operating Schedule'. These paragraphs reflect the information in the Section 182 Guidance issued by the Secretary of state.

3.21 The Home Office-issued ['Guidance issued under section 182 of the Licensing Act 2003'](#) (herein 'the Guidance') states at paragraphs 9.37 and 9.38 that:

9.37 As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular Licensing Objective or Objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they

may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits.

9.38 In determining the application with a view to promoting the Licensing Objectives in the overall interests of the local community, the Licensing Sub-Committee must give appropriate weight to:

- the steps that are appropriate to promote the Licensing Objectives;*
- the representations (including supporting information) presented by all the parties;*
- this Guidance;*
- its own statement of licensing policy.*

3.22 Paragraphs 9.42-9.44 of the Guidance deal with how to determine actions that are appropriate for the promotion of the Licensing Objectives.

3.23 If members are minded to impose conditions to mitigate concerns regarding the undermining of the Licensing Objectives, then Chapter 10 of the Guidance deals with conditions attached to premises licences. The Guidance should be considered along with the East Herts [‘Pool of Model Conditions’](#)¹.

Officer observations

3.24 The application seeks to add Late Night Refreshment as a new licensable activity. A licence for Late Night Refreshment is required in order to serve hot food or hot drinks between the hours of 23:00 and 05:00 and this can cover a wide range of services from a simple tea or coffee to a food takeaway such

¹ Conditions with a letter ‘F’ or marked ‘All’ are relevant to ‘Off-licences’ and some or all may be applied where appropriate having considered the merits of the individual application.

as a kebab shop. The potential impact on the Licensing Objectives of permitting Late Night Refreshment will differ depending on what it is proposed will be provided. The applicant has provided no details so members may wish to seek clarity regarding what Late Night Refreshment will be provided from the premises if this part of the application is granted?

3.25 The applicant has indicated that they are proposing to provide Late Night Refreshment both indoors and outdoors and has included the statement:

- *The provision will take place inside the premises but customers may leave the premises with items purchased.*

If this is the case, then the provision only needs to be permitted indoors so members may wish to seek clarity on this point and see if the applicant wishes to voluntarily amend this part of the application. This links to the point raised by the Police in relation to a possible serving hatch at the premises; will there be one?

3.26 As highlighted earlier in the report the operating schedule within the application is a key source of information to help determine if granting the application would undermine, rather than promote, the Licensing Objectives. In this case the applicant has offered 15 points which could be made into conditions on any granted premises licence. In the Police representation they have detailed that they consider these need to be more robust.

3.27 The Licensing Authority considers that some of the conditions are subjective and thus are ambiguous and unenforceable meaning they should not be included on any granted premises licence. The following conditions should not be placed on any issued premises licence in their current wording (subjective

terms underlined for clarity):

- *The precise positions of the camera may be agreed, subject to compliance with Data Protection legislation, with the police from time to time.*
- *There will at all times be adequate levels of staff maintained at the premises. Such staff levels will be disclosed, on request, to the licensing authority and police.*
- *Adequate waste receptacles for use by customers shall be provided in and immediately outside the premises.*

3.28 Members may wish to review all 15 suggested conditions from the applicant's operating schedule and reach a decision regarding which would promote the Licensing Objectives. If members feel that a condition is ambiguous or uses subjective terms, they may ask the applicant to explain its purpose before deciding whether to exclude or include it from any granted licence. If members are minded to amend an offered condition, then the revised wording should be put to the applicant for comment before a final decision is made.

3.29 In their representation, the Police have requested some conditions in relation to CCTV, for example, that could be used to replace those offered by the applicant if members believe this is appropriate. If agreement hasn't been reached regarding the conditions before the hearing, then members may wish to ask the applicant to highlight any particular issues they have with them.

3.30 Members may wish to ask any of the interested parties that attend the hearing the following questions:

- Have there been any issues since the premises began opening for 24 hours on 8th September 2023?

- Why they believe that the later hours and licensable activities would lead to public nuisance and anti-social behaviour?
- If there is any mitigation that they think the applicant could offer that would address their concerns about the premises opening and providing licensable activity later?
- Is there any extension to the currently permitted hours, either in the morning, the evening or both, that would be acceptable, that is, in terms of promoting the Licensing Objectives?

3.31 Section 5 of the East Herts 'Statement of Licensing Policy' relates to Pre-application advice and engagement.

5.7 Engagement is an important element of the licensing process. Applicants are expected to have considered the location and community it is proposing to operate in.

3.32 Members may wish to enquire as to what, if any, engagement took place prior to the application being made? How did the applicant gain an understanding of the location and community and is this reflected in the application before members today? Of note, from the application and representations there is no evidence of this happening.

3.33 When a Licensing Enforcement Officer visited to inspect the required notice advertising the application, they noted that the applicant had placed signs on three sides of the premises advertising that it is open 24 hours. The applicant was contacted and confirmed that the premises had been open 24 hours since 8th September 2023. Whilst this contradicts the hours on the current premises licence it does not constitute an offence as premises can be open at any time if they do not provide licensable activity. This can continue even if the variation application is refused.

3.34 Section 8 of East Herts Statement of Licensing Policy says:

8.3 The Licensing Authority expects applicants to address the licensing objectives within their operating schedules, having regard to the nature of the premises, the licensable activities to be provided, operational procedures, and the nature of the location and the needs of local communities.

3.35 When reading the applicant's operating schedule, it is unclear if the applicant has given regard to any of the matters detailed above. Members may wish to ask the applicant if they had read the Policy before making the application and what consideration, if any, they gave to the matters listed?

3.36 Whilst not having regard to these matters is not grounds for refusal in themselves, where these matters are given serious consideration at an early stage any subsequent application is more likely to promote the Licensing Objectives than one where a generic application is made.

3.37 As stated in the Guidance, the council's decision should be evidence-based, justified as being appropriate for the promotion of the Licensing Objectives and proportionate to what it is intended to achieve.

3.38 Members should consider if they believe the applicant has provided evidence that the licence, if granted, would promote, and not undermine, the Licensing Objectives. This evidence should be balanced against the evidence given by those making representations that the Licensing Objectives would be undermined.

3.39 Whilst the hours and activities applied for are longer than those detailed in East Herts' 'Statement of Licensing Policy' this does not fetter the Sub-Committee's ability to decide that the hours applied for are appropriate in the circumstances of this

individual application. The Policy is a starting point from which decisions can be made; should the Policy be departed from then members should clearly give their reasons for doing this.

- 3.40 Members should be conscious of the hours already in place under the existing premises licence. They may be minded granting longer hours, but the hours granted must not be less than under the current licence.
- 3.41 If the Sub-Committee believe that granting the application as requested would promote the Licensing Objectives, then the application should be granted as requested.
- 3.42 If the Sub-Committee believe that granting the application as requested would not promote the Licensing Objectives, then the starting point should be to consider if there are conditions that could be added to mitigate concerns.
- 3.43 In considering additional conditions, members should decide whether these steps would in fact address the concerns raised if the decision was made to grant the hours and activities as requested.
- 3.44 For conditions to be enforceable they need to be clear, unambiguous, and free from subjective terms. If a condition cannot be enforced, then it should not be placed on any granted licence.
- 3.45 Aside from adding conditions, it is open to members to limit the hours of operation and/or licensable activities further but clear reasons for this step would need to be given.
- 3.46 However, if adding conditions and/or limiting the hours beyond those requested and/or limiting licensable activities does not mitigate members' concerns regarding the

promotion of the Licensing Objectives then the application should be refused.

- 3.47 Put in its simplest terms, what are the minimum measures that can be put in place to address concerns? Refusal of the application should be the last option considered.
- 3.48 When the Licensing Sub-Committee gives its decision to those in attendance it should be made clear to all parties how much weight has been attached to each submission and why and what evidence members have relied upon when reaching their decision.

4.0 Options

- 4.1 The actions open to the Licensing Sub-Committee are:
- grant the application as requested if they feel the application would promote and not undermine the Licensing Objectives; or
 - grant the application but at the same time impose additional conditions or amend the activities or times requested; or
 - if members believe that there is evidence that shows that there are no steps that can be taken to ensure that the application sought would promote the Licensing Objectives then the application should be refused.

5.0 Risks

- 5.1 A decision on the application must be made and any decision made can be appealed at the Magistrate's Court. Therefore,

the Licensing Sub-Committee should ensure that when giving their decision on the application they give clear reasons on how and why they have made their decision. In doing so, the council's ability to defend its decision is strengthened and the risk of its decision being over-turned on appeal is lessened, although, of course, this risk can never be entirely removed.

6.0 Implications/Consultations

6.1 As with any application for a new premise licence, variation of premise licence or review of a premise licence there is a 28-day public consultation.

6.2 The 28-day public consultation commenced on 26th August 2023 and ended on 22nd September 2023.

Community Safety

6.3 The report details the four Licensing Objectives therefore Community Safety will be considered when determining the application.

Data Protection

6.4 Where the appendices have shown personal data, this has been redacted.

Equalities

6.5 Consideration has made to the Equality Act 2010 and the Public Sector Equality Duty in this report and will be considered during the Licensing Sub-Committee hearing.

Environmental Sustainability

6.6 No

Financial

- 6.7 There will be a cost to the authority in holding the Licensing Sub-Committee hearing; this will be covered by the existing budget.

There would be a cost if the decision of the Licensing Sub-Committee is appealed to the Magistrates Court and the authority chooses to defend that appeal.

Health and Safety

- 6.8 No

Human Resources

- 6.9 No

Human Rights

- 6.10 As with all applications and Council functions, the Human Rights Act 1998 has been considered in this report and will be considered during the Licensing Sub-Committee hearing.

Legal

- 6.11 All statutory requirements have been considered in preparing this report.

Specific Wards

- 6.12 Yes – Buntingford.

7.0 Background papers, appendices, and other relevant material

- 7.1 Revised Guidance issued under section 182 of the Licensing Act 2003 (August 2023) - <https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>

- 7.2 East Herts Statement of Licensing Policy 2021-2026

<https://cdn-eastherts.onwebcurl.com/s3fs-public/2022-03/Statement%20of%20Licensing%20Policy%202021-26%20Mar%2022.pdf>

East Herts Pool of Model Conditions 2021

<https://eastherts.fra1.digitaloceanspaces.com/s3fs-public/2021-08/Pool%20of%20Model%20Conditions%202021%20%28accessible%29.pdf>

- 7.3 **Appendix 'A'** – Existing premises licence (redacted)
- 7.4 **Appendix 'B'** – Premises plans
- 7.5 **Appendix 'C'** – Application for Variation of a Premise Licence (redacted)
- 7.6 **Appendix 'D'** – Representations (redacted)
- 7.7 **Appendix 'E'** – Location of the premises.

Contact Member

Councillor Vicky Glover-Ward, Executive Member for Planning and Growth. vicky.glover-ward@eastherts.gov.uk

Contact Officer

Jonathan Geall – Head of Housing and Health, Tel: 01992 531594. jonathan.geall@eastherts.gov.uk

Report Author

Oliver Rawlings – Service Manager (Licensing and Enforcement), 01992 531629. oliver.rawlings@eastherts.gov.uk